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Supreme Court of the United States

OCTOBER TERM, 1950

No. 310

CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER-INSURANCE BUREAU, APPELLANT,

vs.

WALLACE K. DOWNEY, INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA

APPEAL FROM THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT

FILED SEPTEMBER 16, 1950.

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, DEPARTMENT NUMBER TWO, HONORABLE EDWARD P. MURPHY, JUDGE

No. 374555

California State Automobile Association Inter-Insurance Bureau, Petitioner,

vs.

Wallace K. Downey, Insurance Commissioner of the State of California, Respondent

Clerk's Transcript

Appearances:

For the Petitioner: Messrs. Brobeck, Phleger & Harrison, 111 Sutter Street, San Francisco, California.

For the Respondent: Hon. Fred N. Howser, Attorney General, by T. A. Westphal, Jr., Deputy and Harold B. Haas, Deputy, 600 State Building, San Francisco, California.

[fol. 4] [File endorsement omitted]

In Superior Court of City and County of San Francisco

Petition for Writ of Mandate—Filed March 22, 1948

To the Honorable the Superior Court of the State of California, in and for the City and County of San Francisco:

The petition of California State Automobile Association Inter-Insurance Bureau, respectfully shows:

1. California State Automobile Association Inter-Insurance Bureau, the petitioner herein, is and was at all times herein mentioned a reciprocal or inter-insurance exchange organized and existing under the provisions of Chapter 3, Part 2, Division 1, of the Insurance Code, and permitted to transact liability insurance business in this State, and it is the holder of a certificate of authority issued by the Insur-

ance Commissioner of the State of California to transact said class of insurance business in this State for the year July 1, 1947 to July 1, 1948.

2. The petitioner has been so organized and existing and has been transacting such business continuously since the year 1914.

3. California State Automobile Association is and at all times herein mentioned has been a corporation organized and existing under the laws of the State of California. It was organized in the year 1907 for the purpose of advancing the interests of the motoring public, and it is and at all [fol. 5] times herein mentioned has been a motor club within the meaning of Part 5 of Division 2 of the Insurance Code. It has a membership of over 100,000 citizens of the State of California.

4. Petitioner was formed and organized in the year 1914 solely for the purpose of making insurance available to members of California State Automobile Association, and has at all times thereafter existed solely for that purpose. From its inception it has at all times been and it is its basic underwriting policy that "only members in good standing of the California State Automobile Association or corporations or firms in which such members are officers or partners shall be eligible to apply for insurance in the Bureau."

5. On March 19, 1948, the respondent herein, Wallace K. Downey, as Insurance Commissioner of the State of California, issued a certain "decision" ordering that the Certificate of Authority of the California State Automobile Association Inter-Insurance Bureau to transact liability insurance be suspended. A copy of said decision is attached hereto as Exhibit 1 and made a part hereof. Said decision of the respondent is invalid and void as hereinafter more particularly appears.

6. The said decision purports to have been issued by reason of the failure of petitioner to subscribe to a certain "California Automobile Assigned Risk Plan" claimed by the respondent to have been issued pursuant to the provi- [fol. 6] sions of Article 4, Chapter 1, Part 3, Division 2, of the Insurance Code of the State of California, being Sections 11620 to 11627, inclusive, enacted in the year 1947 and constituting Chapter 1205 of the 1947 Statutes of the State of California. Said plan is set forth as Article 8 of Title 10, California Administrative Code, being Sections

2400 to 2498, inclusive, thereof, and is captioned "California Automobile Assigned Risk Plan." A copy thereof is attached hereto as Exhibit 2 and is made a part hereof.

7. Said statute purports to require insurers to issue insurance and accept risks against their will, and said statute, and the aforesaid plan purported to have been issued thereunder, and the decision of the Insurance Commissioner hereinabove referred to are and each of them is unconstitutional and void and violates each of the following provisions of the Constitution of the United States:

(a) The 14th Amendment as constituting a law depriving persons, and particularly your petitioner and its members, of property and liberty without due process of law.

(b) Section 10 of Article I as constituting a law impairing the obligation of contracts.

8. Said statute purports to require insurers to issue insurance and accept risks against their will, and said statute, and the aforesaid plan purported to have been issued thereunder, and the decision of the insurance Commissioner here- [fol. 7] inabove referred to, are and each of them is unconstitutional, void and violates each of the following provisions of the Constitution of the State of California.

(a) Section 13 of Article I as constituting a law depriving persons, and particularly your petitioner and its members, of property and liberty without due process of law.

(b) Section 16 of Article I as constituting a law impairing the obligation of contracts.

(c) Section 1 of Article III, inasmuch as it purports to delegate to the respondent, said Insurance Commissioner, the exercise of powers properly belonging to the legislative department.

9. Said plan issued by the Insurance Commissioner was not issued pursuant to or in conformity with the said statute, nor was it authorized by the said statute, but was issued in violation thereof in the following respects:

Section 11621 of the Insurance Code provides that "Insofar as possible assignments under plan shall be consistent with the scope of territorial operations and underwriting policies of each subscriber." Said plan expressly violates

said section of the statute by reason of the provisions of Sections 2445.1 and 2445.15 of said plan. The plan is inconsistent with the underwriting policies of the petitioner, to wit: the policy hereinabove set forth limiting insurance to members of California State Automobile Association or cor- [fol. 8] portions or firms of which sued members are officers or partners.

10. If the provision of the statute that "insofar as possible assignments under plan shall be consistent with the scope of territorial operations and underwriting policies of each subscriber" does not, when properly construed, exempt your petitioner from accepting assignments of risk of persons who are not members of California State Automobile Association, said statute is void for uncertainty and ambiguity, and for that reason in addition to any other, said statute, the enforcement thereof, said plan, and the decision of the Insurance Commissioner herein referred to, and each of them, violates the said 14th Amendment of the Constitution of the United States, and Section 13 of Article I and Section 1 of Article III of the Constitution of the State of California.

11. The said decision of respondent was made as the result of a proceeding in which by a law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the respondent, and in fact such proceeding was had on March 5, 1948 and evidence was at that time taken therein.

12. Unless this Court stays the operation of the said decision pending the judgment of the Court herein, your petitioner will be unable to transact any business and its business and property will be irreparably injured without any opportunity having been given to petitioner to have [fol. 9] its day in court for the purpose of having determined the validity of the plan under the statute or the constitutionality of the statute under the Constitutions of the United States and the State of California.

13. Your petitioner has heretofore, pursuant to the provisions of Section 11523 of the Government Code, requested the respondent to prepare and deliver to it within 30 days the complete record of the proceedings as the result of which said decision was made.

14. In making and issuing said decision respondent has proceeded without and in excess of jurisdiction in that (a) he has acted under an unconstitutional statute, as

stated above, and (b) he has acted under a plan issued by him in violation of and not in conformity with the statute, and without statutory authority and warrant, as stated above.

15. The respondent committed a prejudicial abuse of discretion in that:

(a) Finding II of his decision is erroneous and unsupported by the evidence insofar as it finds that the plan issued by respondent was issued "pursuant to the provisions of Article 4, Chapter 1, Part 3, Division 2, of the Insurance Code of the State of California, being Sections 11620 to 11627, inclusive, thereof", and in finding that the said plan was "for the equitable apportionment among insurers admitted [fol. 10] to transact liability insurance, of those applicants for automobile, bodily injury, and property damage liability insurance who are in good faith entitled to, but are unable to procure such insurance through ordinary methods."

(b) Finding II is further erroneous in finding that "This Plan * * * is reasonable."

(c) The decision is not supported by the findings in that it erroneously concludes that your petitioner has violated the provisions of Section 11625 of the Insurance Code in failing to subscribe to said California Automobile Assigned Risk Plan.

(d) The decision is not supported by the findings in that it erroneously determines that your petitioner was required by Section 11620 of said Insurance Code and Section 2498 of Title 10, Article 8 of the California Administrative Code, to subscribe to said plan.

(e) The decision is not supported by the findings in that it erroneously orders the certificate of authority of your petitioner to transact liability insurance to be suspended.

16. At said hearing which occurred on March 5, 1948, the Hearing Officer improperly excluded evidence (both oral and documentary) and proof offered by petitioner herein (the respondent at said hearing), to wit: all evi- [fol. 11] dence offered by your petitioner and excluded as shown by the record of the proceedings thereof, which

record has been requested of respondent by petitioner and which upon presentation thereof will be filed herein.

Wherefore, your petitioner prays

(1) That this Honorable Court make an order directing the respondent to file in this Court the complete record of the proceedings as the result of which the said decision was made;

(2) That this Honorable Court inquire into the validity of the said decision;

(3) That it be ordered, adjudged and decreed that said decision is invalid and void and that the same be annulled and set aside, and that your petitioner be restored to its right to transact insurance business under the provisions of the Insurance Code;

(4) That this Honorable Court make its order staying the operation of the said decision pending the judgment of the Court herein; and

(5) For such other and further relief as may be meet and proper in the premises.

(S.) Brobeck, Phleger & Harrison, Attorneys for Petitioner.

[fol. 12] *Duly sworn to by George Chalmers. Jurat omitted in printing.*

[fol. 13] EXHIBIT 1 TO PETITION

Order of Suspension No. S. F. 5337 A

In the Matter of the Certificate of Authority to Transact Liability Insurance of CALIFORNIA STATE AUTOMOBILE ASSOCIATAON INTER-INSURANCE BUREAU, Respondent

Decision

The attached Proposed Decision of the Hearing Officer is hereby adopted by the Insurance Commissioner as his decision in the above-entitled matter.

It appearing to the Insurance Commissioner from the provisions of Section 11625 of the Insurance Code that insurers who fail to comply therewith should not be permitted to transact liability insurance in this State, it is

hereby ordered that this Decision shall be effective immediately upon its service on the Respondent herein, and, pursuant thereto, the certificate of authority of the California State Automobile Association Inter-Insurance Bureau to transact liability insurance is hereby suspended from the time of such service until the Respondent subscribes to the plan, referred to in the said Proposed Decision, pursuant to the provisions of Section 11625 of the Insurance Code.

It is so ordered this 19th day of March, 1948.

[S.] Wallace K. Downey, Insurance Commissioner.

[fol. 14] STATE OF CALIFORNIA DEPARTMENT OF INSURANCE

No. S.F. 5337-A

In the Matter of the Certificate of Authority to Transact Liability Insurance of CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTERINSURANCE BUREAU, Respondent

Proposed Decision

Pursuant to due notice a hearing on an Accusation in the above-entitled matter came on regularly before John G. Clarkson, Hearing Officer, at San Francisco, California, on March 5, 1948. The Insurance Commissioner was represented by Frank Fullenwider, Esq., Deputy. Respondent was represented by Brobeck, Phleger and Harrison, attorneys at law, appearing through Maurice E. Harrison, Esq., and Moses Laskey, Esq., of San Francisco. Evidence both oral and documentary was adduced, the matter submitted, and upon due consideration thereof, the Hearing Officer makes the following findings of fact:

I

California State Automobile Association Inter-insurance Bureau is admitted to transact liability insurance and is the holder of a certificate of authority issued by the Insurance Commissioner of the State of California to transact the said class of insurance in this State for the year July 1, 1947-July 1, 1948.

[fol. 15] II

The Insurance Commissioner of the State of California, pursuant to the provisions of Article 4, Chapter 1, Part 3, Division 2 of the Insurance Code of the State of California, being Sections 11620 to 11627, inclusive, thereof, did, after public hearing on due notice, approve and issue a plan for the equitable apportionment among insurers admitted to transact liability insurance, of those applicants for automobile, bodily injury, and property damage liability insurance who are in good faith entitled to, but are unable to procure such insurance through ordinary methods.

This Plan, published as Article 8 of Title 10, California Administrative Code, being Sections 2400 to 2498, inclusive, thereof, and captioned "California Automobile Assigned Risk Plan," is reasonable.

III

A copy of said Plan was mailed to the respondent herein on or about December 16, 1947, by said Insurance Commissioner. The Plan declared that it was to be, and it became effective at 12:01 A. M., Pacific Standard Time, on January 19, 1948. Said Plan contains a form of subscription agreement to be signed by all persons then admitted to transact liability insurance in the State of California, including respondent herein. Said plan directed all such persons, including respondent, to subscribe thereto on or before the effective date of said Plan.

[fol. 16] IV

Respondent herein has wholly failed to subscribe to said Plan on or before January 19, 1948, or at all.

V

Said Insurance Commissioner on January 20, 1948, mailed a notice to the respondent herein at its address, 150 Van Ness Avenue, San Francisco 2, California, to subscribe to the said Plan, and the said notice was received by the respondent herein on January 21, 1948; the said notice required subscription to said Plan on or before February 1, 1948.

VI

Respondent herein has wholly failed to comply with the notice referred to in Finding V hereof, or to subscribe to the said Plan on or before February 1, 1948, or at all.

* * * * * * *

Pursuant to the foregoing findings, the Hearing Officer makes the following determination of the issues presented:

I

Respondent herein is an insurer admitted to transact liability insurance in the State of California.

II

Respondent herein has violated the provisions of Section 11625 of the Insurance Code of the State of California in that it has failed to subscribe to the California Automobile Assigned Risk Plan as required by Section 11620 of the said Insurance Code and Section 2498 of Title 10, Article 8 [fol. 17] of the California Administrative Code; and has failed to subscribe to the said Plan on or before February 1, 1948, pursuant to the ten-day written notice to respondent requiring its subscription to the said Plan.

* * * * * * *

Wherefore, the Hearing Officer proposes the following order:

(1) That the Certificate of Authority to transact liability insurance of California State Automobile Association Interinsurance Bureau, respondent herein, be and the same is hereby suspended until said respondent does subscribe to the said Plan pursuant to the provisions of Section 11625 of the said Code.

(2) That this proposed decision, if adopted by the Insurance Commissioner, shall become effective upon the date ordered by the Insurance Commissioner.

I hereby certify that the foregoing constitutes my proposed decision in the above-entitled matter as a result of the hearing had before me on March 5, 1948, at San Francisco, California, and I hereby recommend its adoption as

the decision of the Insurance Commissioner of the State of California.

Dated: March 9, 1948.

John G. Clarkson, Hearing Officer.

[fol. 18] EXHIBIT 2 TO PETITION

Rules and Regulations of the Insurance Commissioner Approving and Issuing a Reasonable Plan for the Equitable Apportionment, Among Insurers Admitted to Transact Liability Insurance, of Those Applicants for Automobile Bodily Injury and Property Damage Liability Insurance Who Are in Good Faith Entitled to but Are Unable to Procure Such Insurance Through Ordinary Methods

California Administrative Code

Title 10. Investment

Chapter 5. Insurance Commissioner

Sub-Chapter 3. Insurers

Article 8. California Automobile Assigned Risk Plan

General

2400. This Plan consists of the rules and regulations contained in this Article and is approved and issued by the Insurance Commissioner pursuant to Article 4, Chapter 1, Part 3, Division 2 of the Insurance Code.

(a) To provide a means by which risks of applicants for automobile bodily injury and property damage liability insurance who are in good faith entitled to such insurance but are unable to procure it through ordinary methods may be assigned to insurers, admitted to transact liability insurance, and

(b) To establish a procedure for the equitable apportionment of such applicants among all such insurers for insurance of such risks.

2401. This Plan and the instrumentality through which it is administered shall be known as the "California Automobile Assigned Risk Plan."

[fol. 19] 2402. This Plan shall take effect at 12:01 A.M., Pacific Standard Time, on January 19, 1948.

2403. Unless the context otherwise requires, as used herein

(a) "Insurer" means an insurer required to participate in this Plan.

(b) "Commissioner" means the Insurance Commissioner.

(c) "Automobile" refers to the automobile incident to whose ownership, operation, maintenance, or use the liability hazards sought to be insured against exist.

(d) "Vehicle" and "Motor Vehicle" mean "vehicle" and "motor vehicle", respectively, as defined in the Vehicle Code.

(e) "Registered", "registration", "operator's license", and "chauffeur's license" have the same meanings as they have in the Vehicle Code.

2404. This Plan shall be available to all residents of California, and to all non-residents, with respect to ownership, operation, maintenance or use of automobiles registered in the State of California.

2405. Subject to the provisions of Section 11621 of the Insurance Code and Section 2449 of this Article, every insurer admitted to transact liability insurance shall participate in this Plan.

2406. Every policy of automobile liability insurance issued pursuant to assignment under this Plan shall provide [fol. 20] coverage in an amount not less than $5,000 for bodily injury to or death of each person as a result of any one accident and, subject to said limit as to one person, in an amount not less than $10,000 for bodily injury to or death of all persons as a result of any one accident, and in an amount not less than $5,000 for damage to property of others as a result of any one accident.

2407. Such policy shall afford standard coverage and restrictive endorsements shall not be employed;

(a) except for the purpose of eliminating the Automatic Renewal Clause.

(b) except as provided in Section 2438.

(c) unless approved by the Governing Committee and not in defeasance of the purposes of the Plan and the statute under which it is approved and issued.

Administration

2420. The Plan shall be administered by a Governing Committee and a Manager who shall establish an administrative office in San Francisco and a branch office in Los Angeles.

2421. The Governing Committee, sometimes herein referred to in the Plan as the Committee, shall consist of five persons, each representative of one of the following groups or classes of insurers:

(a) Insurers members of the National Bureau of Casualty Underwriters.

(b) All other stock insurers.

[fol. 21] (c) Insurers members of the National Association of Automotive Mutual Insurance Companies.

(d) All other mutual insurers.

(e) Reciprocal or interinsurance exchanges.

2421.1. (a) During the first three months, or less, following the effective date of this Plan the Committee shall be comprised, until the election of their successors, of those five representatives of the groups or classes of insurers described in Section 2421 who constitute, on January 17, 1948, the Governing Committee of the voluntary California Automobile Assigned Risk Plan then in existence.

(b) Within such three months' period, on a date fixed by the Committee, and annually thereafter at an annual meeting on a date fixed by the Committee, called upon not less than 20 days' notice in writing to all insurers, the Committee shall be elected by the insurers. A majority of the insurers shall constitute a quorum and voting by proxy shall be permitted.

(c) At such annual meeting each respective group or class of insurers shall elect a member of the Committee, and an alternate to serve in his absence, but if it fails to do so, all insurers in attendance at such meeting shall elect from the group or class so failing a member of the Committee and an alternate, to be representative of such group or class.

2421.15 The Committee shall meet as often as it deems necessary, but not less than once a month on a date fixed by it, for the purpose of reviewing assignments by the Manager and performing the general duties of administration [fol. 22] of the Plan. Three members of the Committee shall constitute a quorum for the transaction of business.

2421.2. The Committee shall select and appoint a Manager of the Plan and shall fix and determine his compensation and the compensation of such other employees as the Manager may employ with its approval.

2421.3. The Committee shall keep a record of all of its proceedings and shall have power and authority to administer the Plan and shall be responsible for all property of the Plan.

2421.4. The Committee shall have authority to budget estimated expenses and costs of administering the Plan and to levy assessments therefore upon the insurers. It shall collect all fees, assessments and other money payable to the Plan and deposit same in a bank designated by it to the credit of the California Automobile Assigned Risk Plan and shall keep proper account of all such funds.

2421.5 The Committee shall have authority to disburse the funds of the Plan in payment of necessary expenses for the administration of the Plan.

2421.6. The Committee may designate one or more individuals to sign checks and drafts in the name and on behalf of the California Automobile Assigned Risk Plan Governing Committee in the transaction of its business, subject to such approval as the Committee may determine. It shall require each person authorized to sign checks and drafts on its behalf to give bond with an admitted surety insurer [fol. 23] as surety in such penal sum as the Committee determines, for the faithful and honest discharge of his duties and for the faithful and honest receipt, custody and disbursement of the funds of the Plan.

2421.7. The Committee shall keep such records and make such reports as are required by Sections 2494 and 2494.5.

2421.8. The Committee shall faithfully and impartially perform and exercise the functions and duties elsewhere in this Plan vested in and imposed upon it.

2421.9. After consultation with the insurers, the Committee may submit to the Insurance Commissioner for approval recommendations for amendments to this Plan.

2422. The Manager shall be the administrative executive of the Plan and shall serve at the pleasure of and be subject to the direction of the Committee. He shall make all assignments under the Plan and faithfully and impartially perform the functions and duties elsewhere in this Plan vested in and imposed upon him and shall keep such statistics and records and make such reports as are required or authorized by Sections 2492 and 2492.5, both inclusive. With the approval of the Committee he may employ such assistance as may be necessary to the efficient operation of the Plan.

Eligibility

2430. This Plan shall apply only to risks of applicants who are in good faith entitled to automobile bodily injury and property damage liability insurance but are unable to [fol. 24] procure it through ordinary methods. Except as otherwise provided in Sections 2431 to 2437, both inclusive, an applicant shall be deemed to be in good faith entitled to insurance.

2431. An applicant is not in good faith entitled to insurance if, during the three-year period immediately preceding the date of the application the applicant or anyone who normally or usually drives the automobile has been convicted more than twice for one, or more than once each for two, of the following offenses:

(a) Driving a vehicle while intoxicated or under the influence of intoxicating liquor in violation of Section 502 of the Vehicle Code.

(b) Driving a vehicle in a reckless manner where injury to person or damage to property actually results therefrom.

(c) Driving a vehicle at an excessive rate of speed where injury to person or damage to property actually results therefrom.

2431.1. An applicant is not in good faith entitled to insurance if, during the three-year period immediately preceding the date of application, the applicant or anyone who normally or usually drives the automobile has been con-

victed more than once of one, or once each for two or more, of the following offenses:

(a) Failing to stop and report when involved in an [fol. 25] accident as required by Section 480 of the Vehicle Code.

(b) Manslaughter or negligent homicide resulting from the operation of a vehicle.

(c) Theft or unlawful taking of a vehicle in violation of Section 503 of the Vehicle Code, or grand theft of a vehicle.

(d) Any felony in the commission of which a motor vehicle is used.

(e) Driving while under the influence of intoxicating liquor and causing the death of or bodily injury to any person in violation of Section 501 of the Vehicle Code.

(f) Operation of a motor vehicle during period of revocation or suspension of registration or operator's license.

(g) Permitting any unlawful use of an operator's or chauffeur's license, or any other offense under Section 338 of the Vehicle Code.

2431.15. An applicant is not in good faith entitled to insurance if, during the three-year period immediately preceding the date of the application the applicant, or anyone who normally or usually drives the automobile has been addicted to the use of, or has been convicted of being under the influence of, narcotics or other drugs.

2431.2. An applicant is not in good faith entitled to insurance if, during the three-year period immediately [fol. 26] preceding the date of the application the applicant or anyone who normally or usually drives the automobile has been convicted more than once for any one, or once each for more than one, of the offenses listed under Section 2431 and once for any of the offenses listed under Section 2431.1.

2431.25. An applicant is not in good faith entitled to insurance if, upon the basis of investigation by the insurer to which the risk is assigned, it is determined to the satisfaction of the Committee that the applicant or anyone who normally or usually drives the automible habitually uses alcoholic beverages to excess.-

2431.3. An applicant is not in good faith entitled to insurance if, upon the basis of investigation by the insurer to which the risk is assigned, it is determined to the satisfaction of the Committee that the applicant has wilfully failed to fully disclose in his application his record of such serious motor vehicle accidents or traffic violations as are material to the acceptance of the risk.

2431.35. An applicant is not in good faith entitled to insurance if, upon the basis of investigation by the insurer to which the risk is assigned, it is determined to the satisfaction of the Committee that the applicant has operated a motor vehicle during the period of revocation or suspension of his operator's license, on more than one occasion.

2431.4. An applicant is not in good faith entitled to insurance if, upon the basis of the investigation by the [fol. 27] insurer to which the risk is assigned, it is determined to the satisfaction of the Committee that the automobile is so defective in respect to brakes, lights, tires, horn, windshield, steering mechanism or general condition as to endanger public safety, and the Committee has required that the necessary repairs be made as a condition to acceptance, but the applicant has failed to submit a certificate from a reputable repair shop stating that such necessary repairs have been so made and completed.

2431.45. An applicant is not in good faith entitled to insurance if, during the 12 months' period immediately preceding the date of application, the applicant has intentionally registered a motor vehicle in this State illegally; or has made false statements in the license application or registration as to name or address; or has impersonated an applicant for license or registration or procured an impersonation whether for himself or for another.

2431.5. An applicant is not in good faith entitled to insurance if the applicant or anyone who normally or usually drives the automobile, has failed to meet all obligations to pay automobile bodily injury and property damage liability insurance premiums contracted during the previous 12 months.

2431.55. An applicant is not in good faith entitled to insurance if the applicant or anyone who normally or usually drives the automobile, or anyone who drives it with

the express or implied consent of the applicant, has a [fol. 28] major mental or physical disability.

2431.6. An applicant is not in good faith entitled to insurance if the risk consists of or includes a vehicle used in carrying passengers for hire or compensation.

2431.65. An applicant is not in good faith entitled to insurance if the risk consists of or includes a vehicle used in the transportation of explosives, gasoline, or other highly inflammable or explosive liquids, gases or materials.

2431.7. An applicant is not in good faith entitled to insurance if the risk consists of or includes any authorized emergency vehicle owned by the United States, the State of California or any political subdivision or municipality thereof, or the applicant is a person qualifying as a self-insurer under Section 420.7 of the Vehicle Code.

2431.75. An applicant is not in good faith entitled to insurance if the applicant or anyone who normally or usually drives the automobile is under 18 years of age on the date of application or renewal and no finding has been made by the Committee upon the recommendation of the Manager that serious and unavoidable hardship will result from inability to obtain insurance.

2431.8. An applicant is not in good faith entitled to insurance if, upon the basis of investigation by the insurer to which the risk is assigned, it is determined to the satisfaction of the Committee that the accident record, conviction record (criminal and traffic), age, and physical, mental, [fol. 29] or other condition of the applicant or anyone who normally or usually drives the automobile, considered as a whole, are such that his operation of an automobile would endanger public safety.

2431.85. An applicant is not in good faith entitled to insurance if, upon the basis of investigation of the experience physical or other condition of the risk by the insurer to which it is assigned, the Committee believes that reasonable doubt exists as to whether the applicant or anyone who normally or usually drives the automobile should continue to be licensed to operate a motor vehicle in this State and requests the Director of Motor Vehicles to re-certify the ability of such applicant or person to con-

tinue to hold an operator's license, but the Director has not so re-certified.

2431.9. (a) Unless one year has elapsed from the date of the rejection or cancellation, or the cause of rejection or cancellation has ceased to be valid by reason of passage of time, an applicant is not in good faith entitled to insurance, if the risk, after assignment under the Plan, has been rejected by the designated insurer for cause and the rejection has been sustained, or the policy, after insurance pursuant to assignment, has been cancelled in accordance with Sections 2470 to 2471.

(b) This section shall not limit the scope and effect of any other section of this Plan.

2432. Deafness, partial or total, and deafness and [fol. 30] dumbness, do not constitute major physical disabilities if all conditions endorsed upon the operator's license of an applicant or other person so disabled requiring special equipment (such as convex or full-view or outside mirrors) are complied with and such applicant cites the special equipment in use and information respecting any restriction on operator's license when submitting application for coverage. Each such risk shall be subject to individual consideration on its merits by the Committee, however, and shall not be in good faith entitled to insurance if the committee is satisfied that the condition of the applicant or other operator is such that his operation of an automobile would endanger public safety.

2433. The loss or loss of use of part or all of an arm or leg does not constitute a major physical disability if the member is replaced by an artificial limb, or special equipment is placed on the automobile and the applicant or other operator passes a special operator's license test of the State. Applicants on such risks shall cite any special equipment in use and information respecting any restriction on operator's license when submitting application for assignment.

2434. The loss of the sight of one eye does not constitute a major physical disability.

2435. Applicants or other operators subject to cardiac or similar conditions which might result in loss of consciousness or control are subject to investigation on the

merits by the Committee and may be required to submit [fol. 31] certificates, satisfactory to the Committee, from at least two qualified medical doctors before assignment to a designated carrier or acceptance of such risks.

2436. Epilepsy shall be considered a major mental or physical disability.

2437. The loss or loss of use of all or part of two legs, two arms, or one arm and one leg shall be considered a major physical disability. However, such risks shall be given individual consideration by the Committee and may be assigned if the Committee is satisfied that the condition of the applicant or other operator is such that his operation of an automobile would not endanger public safety.

2438. If an applicant is ineligible solely by reason of the operation of the automobile by a person or persons other than himself, he may become eligible by agreeing to accept a policy excluding all coverage while the automobile is being operated by such other person or persons. The designated insurer may attach to its policy an endorsement to accomplish this purpose.

Applications

2440. Any applicant for automobile bodily injury and property damage liability insurance who is in good faith entitled to such insurance but is unable to procure it through ordinary methods, may apply for assignment to an insurer under this Plan.

2441. The application for assignment under this Plan [fol. 32] must be signed in every case by the applicant, but may be submitted by the applicant or a licensed producer of record designated by him to act on his behalf.

2442. The application shall be filed in duplicate with the Manager on a form prescribed by the Committee and shall include:

(a) A statement by the applicant to the effect that he has attempted but has been unable to secure automobile bodily injury and property damage liability insurance in this State.

(b) Complete underwriting and character information, and complete financial information where the cov-

erage sought is to be written on a basis requiring final adjustment of the premium subsequent to the expiration of the policy.

(c) A statement by the applicant in cases where the insurance is to be written on a basis requiring final adjustment of the premium after expiration of the policy that he will maintain a complete record of his financial transactions in such reasonable form and manner as the insurer may require and that such record will be available for inspection by the insurer at a designated place and at all reasonable times.

(d) An agreement by the applicant to comply with all reasonable recommendations of the insuring insurer made with the view to reducing the hazards of the risk.

[fol. 33] (e) An agreement by the applicant to remit to the designated insurer within 15 days of notification a certified check, money order, or bank draft payable to the insurer for the balance of the full premium for his policy.

(f) Certification of the application by affidavit of the applicant sworn to before a Notary Public or other person authorized to administer oaths.

2443. When filed the application must be accompanied by a certified check, money order or bank draft in the amount of Five Dollars and payable to the Plan, as an investigation fee. Such fee is not returnable but shall be credited against the premium if the risk is assigned and accepted and the applicant pays the balance of the premium in accordance with the Plan.

2444. Upon receipt of an application properly completed and executed and determination that the risk is eligible for assignment, the Manager shall designate an insurer and assign the risk to such insurer and so advise the producer of record.

2444.5 Upon assignment of a risk to an insurer, the Manager shall forward to such insurer the original application together with the prescribed investigation fee.

Basis and Method of Assignment

2445. The Manager shall, with due regard to exclusions under reinsurance agreements, treaties or contracts filed with him in writing, and with due regard to the facilities of [fol. 34] the designated insurers for servicing the risk, assign the risks which are eligible for assignment in such sequence and number that, as far as practicable, each insurer shall in the long run be given that number of assignments which bear to the total number of assignments the same ratio as the insurer's net direct automobile bodily injury premium writings in California bear to the total net direct automobile bodily injury premium writings in California of all insurers.

2445.1 Insofar as possible, assignments shall be consistent with the scope of territorial operations and underwriting policies of each insurer, of which the Manager shall have been notified in writing. Underwriting policy is policy founded on underwriting judgment of the hazards involved. Without in any way limiting or enlarging the meaning of the term "underwriting policy", policy excluding from insurance an applicant solely by reason of the fact of his non-membership in an organization is not underwriting policy. Underwriting policy excluding from insurance applicants solely by reason of facts or circumstances not sufficient to render them not in good faith entitled, under this Plan, to insurance is inconsistent with the purposes of this Plan and of the statute under which it is approved and issued.

2445.15. In the assignment of a risk when the applicant is a member of a Motor Club licensed under the provisions of Part 5, Division 2 of the Insurance Code, preference shall be given to an insurer which confines its underwriting of [fol. 35] risks not subject to the Plan to members of such Motor Club, and if such insurer accepts such assignment it shall receive credit under the Plan against its normal quota of assignments. No such insurer may refuse to accept an assignment because the applicant is not a member of such Motor Club. It is the purpose of this section to effectuate the purposes of this Plan and the statute under which it is approved and issued where the giving effect to policy other that underwriting policy within the meaning of section 2445.1 would otherwise defeat such purposes.

2446. Where a risk of an applicant consists of or includes two or more separate vehicles or units, each such vehicle or unit shall be counted as an assignment. Where it is not practical to assign each such vehicle or unit to a different insurer, the entire risk may be assigned to the same insurer but such insurer shall be credited with that number of assignments equal to the number of vehicles or units comprising the risk.

2447. Each renewal of an assigned risk as such pursuant to Sections 2482, 2482.5 and 2483.2 shall be counted as an assignment.

2448. For the purpose of assignment of risks to insurers, the Manager shall, from the effective date of the Plan to July 1, 1948, use the relation of the net direct automobile bodily injury premium writings in California of each insurer for the complete calendar year ending December 31, [fol. 36] 1946, to the total of such writings of all insurers for that year, and thereafter, during each year which commences on July 1st, shall use such writings of each such insurer for the complete calendar year which ended on the preceding December 31st in relation to the total of all of such writings for such year. In the event that such writings of a given insurer are not available for the complete calendar year above prescribed by reason of the admission of such insurer during such calendar year or otherwise, its writings shall be adjusted to an annual basis, using the period it actually wrote such business and its writings during such period in making the adjustment.

When an insurer is first admitted or first engages in such business, in order to arrive at a basis for assignments, it shall be presumed that its writings equal the net direct automobile bodily injury writings in California in such prescribed year of the insurer actually writing such business, who, during such year, had the least amount of such writings.

In the event of a merger or consolidation, the total writings of all of the parties to such merger or consolidation shall be used in making the calculations required by this section.

In making the calculations required by this section, the Manager may make corrections made necessary by the admission of new insurers into the automobile bodily injury

field, on a fair and equitable basis, but such corrections need not be made with absolute mathematical certainty.

[fol. 37] 2449. No assignments shall be made under the Plan to an insurer which

(a) Does not transact both automobile bodily injury liability insurance and automobile property damage liability insurance; or

(b) Has withdrawn from this State pursuant to and in compliance with Article 15, Chapter 1, Part 2, Division 1 of the Insurance Code; or

(c) Has discontinued and not resumed the execution of new or renewal contracts of automobile bodily injury and property damage liability insurance and has notified the Commissioner of such discontinuance.

2449.1. Any insurer which after notification to the Commissioner pursuant to Section 2449 resumes the execution of new or renewal contracts of automobile bodily injury and property damage liability insurance shall immediately notify the Commissioner of such resumption.

2449.15. The Commissioner shall promptly inform the Manager of any notifications received by him pursuant to Sections 2449 and 2449.1.

Acceptances and Rejections

2450. Within twenty days after receipt of notice of designation from the Manager, the designated insurer shall either:

(a) Accept the assignment and notify the applicant that if the balance of the full premium as stated in such [fol. 38] notice is received within 15 days or within such further reasonable period as the insurer may agree to, it will issue a policy of automobile bodily injury and property damage liability insurance to become effective 12:01 A. M. of the day following the day on which such premium as stated in such notice is actually received by the insurer; or

(b) Notify the Manager and the applicant, or his producer of record, that it believes that the applicant is not in good faith entitled, under the Plan, to insur-

ance in which event the reasons underlying such belief shall be furnished the Manager.

2450.1. If notification is filed with the Manager pursuant to paragraph (b) of Section 2450, he shall, within five days after receipt of such notification, review the application and all the facts and circumstances surrounding the risk and make a finding whether or not the applicant is in good faith entitled, under the Plan, to insurance, which finding he shall communicate to the designated insurer and the applicant or his producer of record.

2450.3. Within five days after the receipt of a communication from the Manager pursuant to Section 2450.1 that he finds that the applicant is in good faith entitled, under the Plan, to insurance, the designated insurer shall accept the assignment and notify the applicant in accordance with paragraph (a) of Section 2450.

[fol. 39] 2450.5. Each notification in accordance with paragraph (a) of Section 2450 shall include a statement of the total amounts which the applicant is required to pay for the coverage and a copy of each such notification shall be sent by the designated insurer to the Manager and to the producer of record.

2451. Upon receipt of the balance of the full premium within the time specified in its notification in accordance with paragraph (a) of Section 2450, the designated insurer shall issue a policy of automobile liability insurance pursuant to said notification, and shall file with the proper public agencies such required certificates or forms as are applicable to the risk.

2452. When premium payment has been received and the designated insurer has actually issued a policy, such insurer shall immediately notify the Manager that it has actually issued a policy, and shall furnish the Manager with the policy number, effective date of such policy, and the amount of premium collected.

2453. If, at the end of such fifteen day period or further reasonable period specified by the insurer in its notification pursuant to paragraph (a) of Section 2450, the premium has not been paid and the coverage therefor not accepted by the applicant, the designated insurer shall so notify the Manager.

[fol. 40] Rates and Premiums

2460. Each risk assigned under this Plan shall be subject to the rules, rates, minimum premiums, rating plans and classifications which the insurer to which such assignment is made normally applies in this State to risks not subject to the Plan, but such insurer may make a uniform additional charge of 10% for long haul trucking risks and of 15% for all other risks.

2461. If the experience, physical or other condition of any risk assigned under the Plan is such as makes the hazard of the risk greater than that contemplated by the rates or minimum premiums applicable under Section 2460, the insurer to which the assignment is made may charge such rates and minimum premiums as are commensurate with the greater hazards of the risk, subject to the approval of the Committee. Any special increase in rate or minimum premium in accordance with this Section shall be deemed to include the additional charge of 10% for long haul trucking risks and of 15% for all other risks permitted by Section 2460.

Commissions

2462. Unless other special arrangements have been filed with and approved by the Committee, the designated insurer to which an assignment has been made shall pay the producer of record as a commission for his services in accordance with the following limits:

(a) On assignments of long haul trucking risks, 5% [fol. 41] of the total premium charged and collected from the applicant.

(b) On all other assignments, 10% of the total premium charged and collected from the applicant.

2463. In addition to the commission to the producer of record, and unless other special arrangements have been filed with and approved by the Committee, such designated insurer may pay to its licensed agent 2½% of the total premium charged and collected from the applicant as an allowance for field supervision to be actually performed by such agent.

Cancellations

2470. If after the issuance of a policy it develops that the applicant is not or ceases to be in good faith entitled, under the Plan, to insurance or has failed to comply with reasonable safety recommendations in accordance with his application agreement, or has violated any of the terms or conditions upon the basis of which the insurance was issued, or if the insurance was obtained through fraud or misrepresentation, the insuring insurer shall have the right to cancel the policy in accordance with its terms and conditions, provided that the prior written approval of the Manager to such cancellation has been obtained. In all such cases the insurer shall have filed with the Manager, in writing, prior to the effective date of cancellation, a statement of the reasons underlying such cancellation.

2471. If default occurs in the payment of premium upon [fol. 42] any policy written on a basis requiring final adjustment of the premium after expiration, such policy automatically shall be subject to cancellation in accordance with its terms and conditions.

2472. A copy of each cancellation notice pursuant to the policy terms and conditions shall be sent by the insurer to the Manager and the producer of record.

Expirations and Renewals

2480. An insured under an assigned risk who is dissatisfied with the designated insurer and a designated insurer which is dissatisfied with an assigned risk insured by it, may file with the Committee, not less than 30 days prior to the expiration of the policy, written request for assignment of such risk upon expiration to another insurer. Assignment to another insurer shall be at the option of the Committee.

2481. If any insurer other than the one designated under the Plan wishes to insure an assigned risk voluntarily at the rates and classifications normally applicable to risks not subject to the Plan, such insurer may take over the coverage at expiration, or, under the same conditions, may take over the coverage at any time with the consent of the designated insurer.

2482. Every insurer insuring a risk which has been insured for a period not exceeding 24 months by assignment under the Plan shall, upon expiration of the current policy;

(a) Issue a renewal policy voluntarily and not as an assignment under the Plan at the rates and classifi- [fol. 43] cations normally applicable to risks not subject to the Plan, or

(b) Issue a renewal policy as an assignment under the Plan, or

(c) Refuse to issue a renewal policy as an assignment under the Plan on the basis that the insured is not in good faith entitled, under the Plan, to insurance but for no other reason.

2482.1. At least forty-five days prior to the date of such expiration, every such insurer shall notify the Manager and the insured or the producer of record, of its intended procedure under Section 2482. If such notice discloses an intent to refuse to issue a renewal policy as an assignment under the Plan on the basis that the insured is not in good faith entitled to insurance, the insurer shall therewith furnish the Manager with a statement of the full facts underlying such basis for its intention to so refuse to renew.

2482.3. Within five days after receipt of a notification of intention to refuse to issue such a renewal policy, the Manager shall review all of the facts and circumstances surrounding the risk and make a finding whether or not the applicant is in good faith entitled, under the Plan, to insurance and shall communicate such finding to the insurer and the insured or the producer of record.

2482.5. If the Manager finds that the insured is in good faith entitled, under the Plan, to insurance and so notifies [fol. 44] the insurer pursuant to Section 2482.3, upon expiration of the current policy the insurer shall issue a renewal policy as an assignment under the Plan.

2483. The record for the current and two preceding policy years of every risk which is in its third year as an assigned risk under the Plan, except those risks which involve continuing physical impairment, shall be reviewed by the insuring insurer 45 days prior to the expiration of the current policy.

2483.1. Upon expiration of the current policy, every such risk described in Section 2483 shall be considered normal business unless during the period reviewed:

(a) The insured or anyone who normally and usually drives the automobile has been convicted of any one of the offenses described in Sections 2431 and 2431.1.

(b) The insured or anyone who normally and usually drives the automobile has been convicted of a felony.

(c) Any automobile owned by the named insured or any replacement or substitution thereof or any other automobile the operation of which is covered by the policy has been involved in

(1) one accident resulting in bodily injury to any person other than the operator or one accident resulting in both bodily injury and property damage, or

(2) two or more accidents resulting in property [fol. 45] damage.

2483.15. For the purpose of Section 2483.1, an accident shall mean an occurrence in consequence of which

(a) an amount exceeding $200 has been paid as a loss by or on behalf of the insured or by the insurer insuring such automobile; or

(b) an amount exceeding $200 is necessarily held as a reserve by an insurer for any pending claim for bodily injury or property damage, or both; or

(c) civil suit for damages exceeding $200 is pending in court against the owner of such automobile.

2483.2. Each assigned risk which qualifies as normal business in accordance with Section 2483.1 shall not be eligible for further assignment under the Plan unless the producer of record is unable to place the risk with an insurer on a voluntary basis and the applicant continues to be in good faith entitled, under the Plan, to insurance. In the latter event, a renewal policy shall be issued by the insuring insurer for one year at the rates and classifications normally applicable to risks not subject to the Plan and the insurer, if it notifies the Manager, shall be credited with an assignment under the Plan. Thereafter, if such risk cannot be placed with an insurer on a voluntary basis and continues to be in good faith entitled, under the Plan, to

insurance, it shall be reassigned by the Manager as if it were a new risk, in accordance with the procedure for as-
[fol. 46] signment of risks of new applicants.

2484. After 36 months of coverage as an assigned risk under the Plan, each risk which by its record in respect to the matters set forth in Section 2483.1 has demonstrated that it is not a normal risk, and each risk which involves a continuing physical impairment shall be reassigned by the Manager as if it were a new risk, in accordance with the procedure for assignment of risks of new applicants.

2485. Risks reassigned by the Manager pursuant to Sections 2483.2 and 2484 shall be considered as new Risks from the date of such reassignment in the application of the provisions of the Plan.

Finances and Assessments

2490. The reasonable costs of administering the Plan for each fiscal year shall be determined annually by the Committee and shall be apportioned and assessed to the insurers in such proportion as their net direct automobile bodily injury premium writings in the State bear to the total net direct automobile bodily injury premium writings of all insurers in the State during the preceding calendar year. Each insurer shall in any event pay a minimum annual fee of $5.00.

2491. Each insurer shall promptly pay every assessment levied upon it by the Committee pursuant to the provisions of this Plan.

[fol. 47] Records, Statistics and Reports

2492. The Manager shall keep complete and adequate records and statistics of the applications filed, assignments made, policies issued, rejections sustained and cancellations under the Plan and of the experience of the insurers under such policies on the basis of premiums earned and losses incurred showing separately the experience of risks rated under Section 2460 and risks rated under Section 2461.

2492.1 The Manager shall prepare a report, by insurers, of the assignments made, policies issued, rejections sustained, and cancellations under the Plan for the period ending June 30, 1948, and for each six months' period thereafter. Each such report shall be made to the Committee

and a copy thereof shall be sent by the Manager to the Commissioner and to all insurers within 60 days after the close of the period covered thereby.

2492.3 The Manager shall prepare a report, by insurers, of the premiums earned and losses incurred under policies issued pursuant to assignment under the Plan, showing separately the experience of risks rated under Section 2460 and the experience of risks rated under Section 2461, for the period ending December 31, 1948, and for each 12 months' period thereafter. Each such report shall be made to the Committee and a copy thereof shall be sent to the Commissioner and to all insurers within 120 days after the close of the period covered thereby.

[fol. 48] 2492.5. The Manager shall keep such other records and statistics and make such other reports as the Committee may require.

2493. Every insurer shall keep records and statistics of its experience under all policies issued by it pursuant to assignment under this Plan in such a manner as to enable it to report such experience in the form required by the Committee, and shall make such reports of such experience as the Committee may require.

2494. The Committee shall keep a record of all funds received, disbursed and held by it and shall prepare and submit to the Commissioner and to all insurers a true and correct statement of all receipts and disbursements for the period ending June 30, 1948, and for each six-months' period thereafter. Each such statement shall be so submitted by the Committee within 60 days of the close of the period covered thereby.

2494.5. The Committee shall keep such other records and statistics and shall make such other reports as the Commissioner may require.

Appeals

2495. Any applicant, insured or insurer under the Plan who is affected by any act, ruling, decision or order of an insurer, the Manager or the Committee, and believes such act, ruling, decision or order to be in conflict with or not authorized by the provisions of the Plan or by the law, may [fol. 49] appeal in writing in the first instance to the Committee, setting forth his grounds for such belief. If any

member of the Committee is an officer, employee or other representative of an insurer which is a party to the matter, the other members of the Committee shall designate another person representative of the same group or class of insurer represented by such Committee member to replace him for the purpose of hearing the appeal. The Committee shall review all evidence and consider all statements, arguments, and contentions at a hearing upon not less than five days' notice to the parties to the matter, and within five days thereafter shall notify such parties of its decision which shall be binding upon all parties, subject to appeal to the Commissioner.

If any party to a matter which has been so appealed to the Committee is dissatisfied with the decision of the Committee upon such appeal, he may appeal to the Commissioner who shall hear the parties, review the matter and render a decision which shall be binding upon all parties.

Examinations

2496. Whenever he deems it necessary the Commissioner may examine the business, affairs and operations of the Plan. The costs and expenses of such examinations by the Commissioner shall be paid as prescribed in Section 736 of the Insurance Code and shall be a proper charge against the funds of the Plan as an expense and cost of administering the Plan.

[fol. 50] Forms and Supplies

2497. Printed copies of the Plan and the application form shall be available at cost upon requisition to the Manager. Every insurer shall order its required supply and furnish its branch offices and policy writing agencies with an adequate stock of the forms. Application forms shall be available to any applicant or producer of record upon request so as to minimize delay in granting of coverage through assignment under the Plan to qualified applicants.

Subscription

2498. Every insurer admitted to transact liability insurance shall subscribe to this Plan. Such subscription shall be filed with the Commissioner not later than the effective date of this Plan or upon application for admission to

transact liability insurance and shall be in the following form:

Whereas, the Insurance Commissioner of the State of California, after public hearing upon published notice, has approved and issued, pursuant to Article 4, Chapter 1, Part 3, Division 2 of the California Insurance Code, a plan for the equitable apportionment, among insurers admitted to transact liability insurance in the State of California, of those applicants for automobile bodily injury and property damage liability insurance who are in good faith entitled to but are unable to procure such insurance through ordinary [fol. 51] methods, which plan has been designated as the "California Automobile Assigned Risk Plan" and is by reference incorporated herein and made a part hereof, and

Whereas, the undersigned is an insurer which either is presently admitted to transact liability insurance in the State of California or has applied for Certificate of Authority or renewal Certificate of Authority to transact liability insurance in the State of California and is required by the provisions of Section 11620 of said Code to subscribe to and participate in such Plan.

Therefore, pursuant to the provisions of said Section 11620 of the California Insurance Code, and in consideration of its admission to transact liability insurance in the State of California, the undersigned insurer hereby subscribes to said California Automobile Assigned Risk Plan and agrees to participate therein in accordance with the terms thereof.

This subscription and agreement shall be deemed to have been executed in the State of California and the interpretation and enforcement thereof shall be governd by the laws of that State.

[fol. 52] In Witness Whereof, —— ——, (Name of Insurer), has to these presents affixed its seal and caused its name to be subscribed and attested by its —— ——, (Title of Officer), and —— ——, (Title of Officer), on the — day of —— 194—.

—— ——, (Name of Insurer); By —— ——, (Name of Officer). (Seal.)

Attest: —— ——, (Name of Officer); —— ——, (Name of Officer).

[fol. 53] [File endorsement omitted]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

ORDER TO SHOW CAUSE—Filed March 22, 1948

Upon reading the verified petition for writ of mandate heretofore filed in the above entitled proceeding,

It is hereby ordered that Wallace K. Downey, Insurance Commissioner of the State of California, the respondent herein, be and appear before this Court on Monday, the 5th day of April, 1948, at the hour of 2:00 P.M. of that day at the Courtroom of Department No. 2, of the above named Court in the City Hall at San Francisco, California, then and there to show cause, if any he has, why the prayer of the petitioner herein should not be granted and the order of said respondent dated March 19, 1948, copy of which is attached to the petition herein, should not be vacated and set aside, and the right of the petitioner herein to transact liability insurance should not be restored as the holder of a certificate of authority issued by respondent to transact said business for the year July 1, 1947 to July 1, 1948.

And good cause appearing therefor, it is hereby further ordered that the operation of the said decision of the respondent dated March 19, 1948 be and the same is hereby stayed and nullified pending the judgment of this Court therein.

[fol. 54] And good cause appearing therefor, it is further ordered that respondent file in this Court the complete record of the proceedings as the result of which the said decision of the respondent was made.

Dated: March 22, 1948.

(s) Herbert C. Kaufman, Judge of the Superior Court.

[fol. 55] [File endorsement omitted]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

RESPONDENT'S RETURN—Filed April 26, 1948

Now comes Wallace K. Downey, as Insurance Commissioner of the State of California, and herewith makes his return on the order to show cause in the above proceedings.

And for First Part of Said Return

Said respondent demurs to the petition for writ of mandate herein and for grounds or demurrer specifies:

I

That said petition does not state facts sufficient to constitute a cause of action.

II

That said petition is uncertain in that paragraph 16 thereof does not designate or specify the evidence alleged by petitioner to have been improperly excluded.

III

That said petition is ambiguous in the same respect that it is uncertain.

IV

That said petition is unintelligible in the same respect as it is ambiguous.

And by way of answer, as the second part of said return, respondent admits, denies and alleges as follows:

[fol. 56]

I

Admits the allegations of paragraph 1 of said petition.

II

Admits the allegations of paragraph 2 of said petition.

III

In respect to the allegations of paragraph 3 of said petition respondent is without information or belief as to the number of members of the California State Automobile Association and as to how many of those members are citizens of the State of California, and for lack of such information and belief denies that said Association has a membership of over one hundred thousand citizens or that it has any substantial membership. Except with respect to said membership, respondent admits the allegations of paragraph 3 of said petition.

IV

In respect to the allegations of paragraph 4 of said petition, respondent is without information or belief as to the purpose of the organization of petitioner or as to the purpose of its subsequent existence, and for lack of such information or belief denies that petitioner was formed and organized in the year 1941 solely for the purpose of making insurance available to members of the California State Automobile Association, or that it was formed for the purpose of making insurance available to said members, and likewise denies that it was formed and organized in the year 1914 solely for the purpose of making insurance [fol. 57] available to members of California State Automobile Association, or that it at all times thereafter existed solely for that purpose.

Respondent further denies that a rule that only members in good standing of the California State Automobile Association or corporations or firms in which such members are officers or partners shall be eligible to apply for insurance in said petitioner is its basic underwriting policy or is an underwriting policy at all, and denies that petitioner has adhered to such a rule.

V

In respect to the allegations of paragraph 5 of said petition respondent denies that said decision of the respondent is invalid, denies that such decision is void, and denies that it is invalid and void; with this exception respondent admits the allegations of said paragraph 5 of said petition.

VI

Admits the allegations of paragraph 6 of said petition.

VII

With respect to the allegations of paragraph 7 of said petition, respondent admits that the assigned risk plan therein referred to requires insurers to subscribe thereto and to observe and adhere to the terms thereof; with this exception denies each and every, all and singular, the allegations of said paragraph 7.

[fol. 58]

VIII

With respect to the allegations of paragraph 8 of said petition respondent admits that the assigned risk plan therein referred to requires insurers to subscribe thereto and to observe and adhere to the terms thereof; with this exception denies each and every, all and singular, the allegations of said paragraph 8.

IX

Denies each and every, all and singular, the allegations of paragraph 9 of said petition.

X

Denies each and every, all and singular, the allegations of paragraph 10 of said petition.

XI

Admits the allegations of paragraph 11 of said petition.

XII

Denies each and every, all and singular, the allegations of paragraph 12 of said petition.

XIII

Admits the allegations of paragraph 13 of said petition and alleges that a certified copy of said proceedings has by respondent been filed with this Court.

XIV

Denies each and every, all and singular, the allegations of paragraph 14 of said petition.

[fol. 59]

XV

Denies each and every, all and singular, the allegations of paragraph 15 of said petition.

XVI

Denies each and every, all and singular, the allegations of paragraph 16 of said petition.

XVII

Respondent alleges that petitioner alone has refused to subscribe to said assigned risk plan and that all other insurers transacting the class "liability insurance" in the State of California have subscribed to said plan; that attached hereto, marked Exhibit "B" and made a part hereof is an affidavit on behalf of respondent to that effect.

Wherefore, respondent prays that this Court deny petitioner any relief in this proceeding and that respondent be dismissed hence with its costs.

Dated: April 26, 1948.

(s) Fred N. Howser, Attorney General of the State of California; T. A. Westphal, Jr., Deputy Attorney General; Harold B. Haas, Deputy Attorney General, Attorneys for Respondent.

[fol. 60] EXHIBIT "B" TO RETURN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

Affidavit No. 374555

CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER-INSURANCE BUREAU, Petitioner,

vs.

WALLACE K. DOWNEY, Insurance Commissioner of the State of California, Respondent

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Talt E. Stealey, being first duly sworn, deposes and says as follows, to wit:

1. That he is a Deputy Insurance Commissioner of the Department of Insurance, State of California, and is employed at the office of the Insurance Commissioner, State of California, at San Francisco, California;

2. That said Department keeps a record of each insurer admitted to transact liability insurance in the State of Cali-

fornia, and a record of whether or not each such liability insurer has subscribed to the California Automobile Assigned Risk Plan;

3. That Affiant has examined such record of said Department of Insurance, and said record discloses the following:

(a) That there are 137 insurers admitted to transact liability insurance in the State of California;

[fol. 61] (b) That of said number of insurers admitted to transact liability insurance in the State of California, 136 have subscribed to the California Automobile Assigned Risk Plan;

(c) That the only insurer admitted to transact liability insurance in the State of California which has not subscribed to the California Automobile Assigned Risk Plan is the California State Automobile Association Inter-Insurance Bureau;

(d) That the companies admitted to transact liability insurance in the State of California who have subscribed to the California Automobile Assigned Risk Plan are:

Accident & Casualty Insurance Company of Winterthur, Switzerland.
Aetna Casualty and Surety Company.
Allied Compensation Insurance Company.
Allstate Insurance Company.
American Automobile Insurance Company.
American Bonding Company of Baltimore.
American Casualty Company of Reading, Pennsylvania.
American Credit Indemnity Company of New York.
American Eagle Fire Insurance Company.
American Employers' Insurance Company.
American Fidelity & Casualty Company, Inc.
American Guarantee & Liability Insurance Company.
American Indemnity Company.
American Motorists Insurance Company.
[fol. 62] American Mutual Liability Insurance Company.
American Reinsurance Company.
American States Insurance Company.
American Surety Company of New York,
Anchor Casualty Company.
Arex Indemnity Company.
Associated Indemnity Corporation.
Atlantic Insurance Company.

Bankers Indemnity Insurance Company.
California Casualty Indemnity Exchange.
California Compensation Insurance Company.
Canadian Indemnity Company.
Car & General Insurance Corporation, Ltd.
Casualty Indemnity Exchange.
Casualty Reciprocal Exchange (Subscribers at).
Celina Mutual Casualty Company.
Central Surety and Insurance Corporation.
Colonial Insurance Company.
Columbia Casualty Company.
Commercial Casualty Insurance Company.
Commercial Standard Insurance Company.
Connecticut Indemnity Company.
Consolidated Underwriters.
Continental Casualty Company.
Continental Insurance Company.
Century Indemnity Company.
[fol. 63] Eagle Indemnity Company.
Employers Casualty Company.
Employers' Liability Assurance Corporation, Ltd.
Employers Mutual Liability Insurance Co. of Wisconsin.
Employers Reinsurance Corporation.
European General Reinsurance Company, Ltd.
Excess Insurance Company of America.
Factory Mutual Liability Insurance Co. of America.
Farmers Insurance Exchange.
Fidelity & Casualty Company of New York.
Fidelity & Deposit Company of Maryland.
Fidelity, Phoenix Fire Insurance Company.
Fireman's Fund Indemnity Company.
Fireman's Fund Insurance Company.
Founders Fire & Marine Insurance Company.
General Accident Fire and Life Assurance Corporation, Ltd.
General Casualty Company of America.
General Insurance Corporation.
General Reinsurance Corporation.
Glens Falls Indemnity Company.
Globe Indemnity Company.
Great American Indemnity Company.
Guarantee Insurance Company.
Gulf Insurance Company.
Harbor Insurance Company.

Hardware Indemnity Insurance Company of Minnesota.
[fol. 64] Hardware Mutual Casualty Company.
Hartford Accident & Indemnity Company.
Hartford Fire Insurance Company.
Home Fire & Marine Insurance Company of California.
Home Indemnity Company.
Indemnity Insurance Company of North America.
Industrial Indemnity Company.
Industrial Indemnity Exchange.
Liberty Mutual Insurance Company.
London Guarantee and Accident Company Ltd.
London & Lancashire Indemnity Company of America.
Lumbermen's Mutual Casualty Company.
Manufacturers' Casualty Insurance Company.
Manufacturers & Merchants Indemnity Company.
Manufacturers & Wholesalers Indemnity Exchange.
Maryland Casualty Company.
Massachusetts Bonding & Insurance Company.
Medical Protective Company.
Metropolitan Casualty Insurance Co. of New York.
Mid-States Insurance Company.
Mutual Implement & Hardware Insurance Company.
National Automobile & Casualty Insurance Company.
National Casualty Company.
National Surety Corporation.
New Amsterdam Casualty Company.
New York Casualty Company.
[fol. 65] Niagara Fire Insurance Company.
Northwest Casualty Company.
Northwestern Insurance Company.
Northwestern National Casualty Co.
Norwich Union Indemnity Company.
Ocean Accident & Guarantee Corporation.
Ohio Casualty Insurance Company.
Ohio Farmers Indemnity Company.
Pacific Automobile Insurance Company.
Pacific Employers Insurance Company.
Pacific Indemnity Company.
Peerless Casualty Company.
Phoenix Indemnity Company.
Pioneer Equitable Insurance Company of Indiana.
Preferred Accident Insurance Company of New York.
Republic Indemnity Company of America.

Royal Indemnity Company.
Saint Paul Mercuty Indemnity Company.
Seaboard Surety Company.
Security Mutual Casualty Company.
Service Casualty Company of New York.
Standard Accident Insurance Company.
State Farm Mutual Automobile Insurance Company.
Sun Indemnity Company of New York.
Superior Insurance Company.
Traders & General Insurance Company.
[fol. 66] Transit Casualty Company.
Transport Insurance Exchange.
Travelers Insurance Company.
Travelers Indemnity Company.
Trinity Universal Insurance Company.
Truck Insurance Exchange.
United National Indemnity Company.
United Pacific Insurance Company.
United States Casualty Company.
United States Fidelity & Guaranty Company.
United States Guarantee Company.
Utica Mutual Insurance Company.
West American Insurance Company.
Western Casualty and Surety Company.
Western National Indemnity Company.
Western National Insurance Company.
Yorkshire Indemnity Company of New York.
Zurich General Accident & Liability Insurance Co., Ltd.

(S.) Talt E. Stealey, Affiant.

Subscribed and sworn to before me this 26th day of April, 1948. Irene V. Boost, Deputy Insurance Commissioner.

[fol. 67] In Superior Court of City and County of San Francisco

Clerk's Minute Entry

Order for Judgment—September 13, 1948

Upon a careful reading of the entire record and briefs in this cause, and consideration of counsel's contentions, I have found that petitioner was given a fair trial, respondent proceeded within his jurisdiction in the manner required by law, respondent's order is supported by the findings and the findings are supported by the evidence. I have also found that respondent's order was properly issued within the scope of the authority given him by the statute under which he acted, and that the statute is a valid and proper exercise of legislative power.

Therefore, the writ of mandate applied for is denied and judgment is ordered for respondent. Pursuant to the provisions of Subdivision (f) of Section 1094.5, Code of Civil Procedure, the stay of the respondent's order shall terminate upon notice of entry of the judgment.

Counsel for respondent is directed to prepare findings of fact and conclusions of law.

[fol. 68] [File endorsement omitted]

In Superior Court of City and County of San Francisco

Findings of Fact and Conclusions of Law—September 29, 1948

The above entitled proceeding came on regularly for hearing on June 30, 1948, in Department 2 of the above entitled Court before the Honorable Edward P. Murphy, Judge Presiding, without a jury. Petitioner was represented by Brobeck, Phleger and Harrison, by Moses Lasky, Esq., and the respondent was represented by Fred N. Howser, Attorney General of the State of California, by T. A. Westphal, Jr., and Harold B. Haas, Deputies Attorney General. The record of the proceedings before the Insurance Commissioner having been filed it was agreed by counsel that the same was before the Court. Certain addi-

tional evidence was offered and some received, and arguments of counsel were heard, briefs by counsel having theretofore been submitted pursuant to permission of the Court.

The Court has read and considered the entire record of the proceedings before respondent, and has duly considered the pleadings and argument of the parties in the case. Upon the basis of such reading and consideration it now makes and files its findings of fact and conclusions of law as follows:

I

That, with respect to a certain written "Decision" of the Insurance Commissioner, adopting a "Proposed De-
[fol. 69] cision" of a Hearing Officer, which said "Decision" bears date of March 19, 1948, a true copy of both "Decision" and "Proposed Decision" being set forth as "Exhibit 1" to the Petition for Writ of Mandate in this case are therefore not here set forth at length, said "Decision" was duly and regularly issued, the order thereby adopted was supported by findings which, in turn, were supported by the weight of the relevant and material evidence, said order was within the legal discretion and jurisdiction of the respondent and was a valid and reasonable exercise of that discretion and jurisdiction, the proceeding in which such evidence was taken was duly and regularly had and taken, and petitioner was given a fair trial therein.

II

That the allegations set forth in paragraphs 1, 2 and 3 of the Petition for Writ of Mandate herein are true.

III

That petitioner was formed and organized in the year 1914, solely for the purpose of making insurance available to, and has in practice limited its insurance coverage to "Members of the California State Automobile Association or corporations or firms in which such members are officers or partners," and has at all times thereafter existed solely for that purpose, and it has continued this practice in force, but there is no evidence to show that said association applied or enforced any particular standard affecting insurability in procuring or accepting such members. From its incep-
[fol. 70] tion it has at all times been and it is petitioner's

basic policy that only members in good standing of the California State Automobile Association or corporations or firms in which such members are officers or partners shall be eligible to apply for insurance in petitioner.

IV

That on March 19, 1948, the respondent herein, Wallace K. Downey, as Insurance Commissioner of the State of California, issued a certain "Decision" ordering that the certificate of authority of the California State Automobile Association Inter-Insurance Bureau to transact liability insurance be suspended. That "Decision" is not set forth in full here because it is admitted by respondent that the copy thereof set forth as "Exhibit 1" to the petition for Writ of Mandate herein is a correct copy. That it is untrue that said "Decision" is invalid and void; but that it is true that said "Decision" is valid and lawful; that the "Decision" and every part thereof is within the proper and lawful discretion of respondent; that in the proceedings which led to said "Decision" respondent proceeded within his proper and lawful discretion in the manner required by law and gave petitioner a fair trial; and that the order which is a part thereof is supported by the findings and the findings are supported by the evidence.

V

That the "Decision" was issued by reason of failure of [fol. 71] petitioner to subscribe to a certain "California Automobile Assigned Risk Plan," which plan was issued pursuant to the provisions of Article 4, Chapter I, Part 3, Division 2 of the Insurance Code of the State of California; that said plan was a part of the record and is set forth as Article 8 of Title 10, California Administrative Code, being sections 2400 to 2498, inclusive, thereof and is captioned, "California Automobile Assigned Risk Plan." Pursuant to the provisions of section 11384 of the Government Code, the Court also takes judicial notice of the provisions of said plan.

VI

That petitioner and all other insurers authorized to transact liability insurance in California are required by the statute and under the plan to subscribe to and to observe

and adhere to the terms of the California Automobile Assigned Risk Plan, but that neither the plan nor any part thereof, nor the "Decision" of the Insurance Commissioner above referred to, are unconstitutional or void; that neither sections 11620 to 11627, inclusive, Insurance Code, nor any portion of said sections, are unconstitutional or void; that the "Decision" and order of the respondent were properly issued pursuant to said statute, plan and other laws regulating such action by said respondent.

VII

That the practice by petitioner of limiting its insurance coverage, set forth in Finding of Fact Number III, above, is [fol. 72] not an "underwriting policy" within the meaning of that term as used in section 11621, Insurance Code; but that if such practice be regarded as such an underwriting policy the California Automobile Assigned Risk Plan does not violate that section of the Insurance Code, either by reason of the provisions of sections 2445.1, 2445.15, or by reason of any other portion of that plan; that neither said plan, nor any portion thereof, violates any provision of either the Constitution of the State of California or the Constitution of the United States.

VIII

The Court makes no finding on the allegations of paragraph 12 of the petition for writ of mandate and finds that the allegations of paragraph 13 thereof are true.

IX

That, except as otherwise set forth in these Findings of Fact, the allegations of the Petition for Writ of Mandate herein are untrue.

Conclusions of Law

As conclusions of law from the foregoing findings of fact, the Court finds and legally concludes:

I

That respondent Insurance Commissioner had jurisdiction to begin, carry on, and conclude the proceedings upon which his "Decision" was based, and that he had jurisdic-

tion to issue that "Decision," sought to be annulled herein; [fol. 73] that said proceedings and "Decision" were within the scope of his lawful discretion, and that he duly, regularly, and properly exercised said discretion in carrying on said proceedings and making said "Decision" and each of the findings set forth in said "Decision" is supported by the evidence.

II

That said decision is in no manner invalidated by reason of any provision of sections 11620 to 11627, inclusive, Insurance Code, or by reason of any provision of the "California Automobile Assigned Risk Plan"; that said plan was issued pursuant to and in conformity with said statute, and that neither said statute nor said plan is invalid by reason of conflict with any provision of the Constitution of the State of California or of the United States.

III

That respondent is entitled to the issuance of judgment denying the Writ of Mandate applied for by petitioner and dissolving the stay of respondent's "Decision" and order heretofore issued by this Court, and dismissing respondent hence with its costs.

Let Judgment issue accordingly.

Dated: September 29, 1948

(S.) Edward P. Murphy, Judge of the Superior Court.

Receipt of copy of within Findings of Fact and Conclusions of law admitted this 29th day of September, 1948, and form approved as being in accord with Court's rulings on settlement.

(S.) Brobeck, Phleger and Harrison, Moses Lasky.

[fol. 74] IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

CLERK'S MINUTE ENTRY RE FINDINGS—September 29, 1948

In this action, with respective counsel present, the Court ordered findings settled as amended and off calendar.

[fol. 75] [File endorsement omitted]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

JUDGMENT—September 29, 1948

The above proceeding came on regularly for hearing on June 30, 1948 in Department 2 of the above entitled court, before the Honorable Edward P. Murphy, Judge Presiding, without a jury. Petitioner was represented by Brobeck, Phleger and Harrison, by Moses Lasky, Esq., and the respondent was represented by Fred N. Howser, Attorney General of the State of California, by T. A. Westphal, Jr., and Harold B. Haas, Deputies Attorney General.

The record of the proceedings before the Insurance Commissioner having been filed, it was agreed by counsel that the same was before the Court. Certain additional evidence was offered and some received, and arguments of counsel were heard, briefs by counsel having theretofore been submitted pursuant to permission of the Court.

The Court having duly considered the matter and having filed its findings of fact and conclusions of law constituting the decision of the Court,

Now, therefore, it is hereby ordered, adjudged and decreed:

I

That the Petition for Writ of Mandate in this cause be and hereby is denied.

[fol. 76] II

That pursuant to the provisions of subdivision (f) of section 1094.5, Code of Civil Procedure, the st-y of the decision of the Commissioner heretofore issued as part of the Order to Show Cause in this proceeding be and hereby is dissolved

tion to issue that "Decision," sought to be annulled herein; [fol. 73] that said proceedings and "Decision" were within the scope of his lawful discretion, and that he duly, regularly, and properly exercised said discretion in carrying on said proceedings and making said "Decision" and each of the findings set forth in said "Decision" is supported by the evidence.

II

That said decision is in no manner invalidated by reason of any provision of sections 11620 to 11627, inclusive, Insurance Code, or by reason of any provision of the "California Automobile Assigned Risk Plan"; that said plan was issued pursuant to and in conformity with said statute, and that neither said statute nor said plan is invalid by reason of conflict with any provision of the Constitution of the State of California or of the United States.

III

That respondent is entitled to the issuance of judgment denying the Writ of Mandate applied for by petitioner and dissolving the stay of respondent's "Decision" and order heretofore issued by this Court, and dismissing respondent hence with its costs.

Let Judgment issue accordingly.

Dated: September 29, 1948

(S.) Edward P. Murphy, Judge of the Superior Court.

Receipt of copy of within Findings of Fact and Conclusions of law admitted this 29th day of September, 1948, and form approved as being in accord with Court's rulings on settlement.

(S.) Brobeck, Phleger and Harrison, Moses Lasky.

[fol. 74] IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

CLERK'S MINUTE ENTRY RE FINDINGS—September 29, 1948

In this action, with respective counsel present, the Court ordered findings settled as amended and off calendar.

[fol. 75] [File endorsement omitted]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

JUDGMENT—September 29, 1948

The above proceeding came on regularly for hearing on June 30, 1948 in Department 2 of the above entitled court, before the Honorable Edward P. Murphy, Judge Presiding, without a jury. Petitioner was represented by Brobeck, Phleger and Harrison, by Moses Lasky, Esq., and the respondent was represented by Fred N. Howser, Attorney General of the State of California, by T. A. Westphal, Jr., and Harold B. Haas, Deputies Attorney General.

The record of the proceedings before the Insurance Commissioner having been filed, it was agreed by counsel that the same was before the Court. Certain additional evidence was offered and some received, and arguments of counsel were heard, briefs by counsel having theretofore been submitted pursuant to permission of the Court.

The Court having duly considered the matter and having filed its findings of fact and conclusions of law constituting the decision of the Court,

Now, therefore, it is hereby ordered, adjudged and decreed:

I

That the Petition for Writ of Mandate in this cause be and hereby is denied.

[fol. 76] II

That pursuant to the provisions of subdivision (f) of section 1094.5, Code of Civil Procedure, the stay of the decision of the Commissioner heretofore issued as part of the Order to Show Cause in this proceeding be and hereby is dissolved

rated in the record on appeal and hereby requests that said Clerk prepare a Clerk's transcript and include therein:

1. The Judgment Roll.

2. Unless otherwise included in the record as part of the Judgment Roll, the Petition for Writ of Mandate and the Respondent's Return (not including "Memorandum of Points and Authorities on Respondent's Return to the Order to Show Cause").

[fol. 80] 3. Order to show cause issued March 22, 1948.

4. Record of Proceedings before the Insurance Commissioner filed herein by respondent.

5. The Clerk's minutes, including minute order entered on or about September 13, 1948.

6. Findings of fact and conclusions of law.

7. Judgment.

8. Notice of entry of judgment.

9. Notice of appeal.

10. This notice.

The above mentioned Record of Proceedings before the Insurance Commissioner need not be copied into the Clerk's transcript if it is possible to transmit the original to the reviewing court, and it is requested that the original of said Record of Proceedings before the Insurance Commissioner shall be so transmitted in accordance with the Rules on Appeal.

Dated: November 3, 1948.

Brobeck, Phleger & Harrison, Attorneys for petitioner and appellant California State Automobile Association Inter-Insurance Bureau.

[fols. 81-84] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 85] BEFORE THE DEPARTMENT OF INSURANCE, STATE OF CALIFORNIA

No. S. F. 5337-A

In the Matter of the Certificate of Authority to Transact Liability Insurance of CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER-INSURANCE BUREAU, Respondent

Reporter's Transcript of Proceedings at Hearing

Hearing Room,
Department of Insurance,
417 Montgomery Street,
San Francisco, California.
March 5, 1948.

Before: John G. Clarkson, Esq., Hearing Officer

APPEARANCES:

For the Department: Frank Fullenwider, Esq., Deputy Insurance Commissioner.

For the Respondent: Brobeck, Phleger & Harrison, Represented by: Moses Lasky, Esq., Maurice E. Harrison, Esq.

[fols. 86-91] Morning Session—Friday, March 5, 1948

Hearing Officer: Are you ready, Mr. Fullenwider?

Mr. Fullenwider: Yes, Mr. Clarkson.

Hearing Officer: Does someone here represent the Respondent, California State Automobile Association, Inter-Insurance Bureau?

Mr. Lasky: Yes sir.

Hearing Officer: Will you let the reporter have your full name and experience?

Mr. Lasky: Representing the California State Automobile Inter-Insurance Bureau are Maurice E. Harrison and Moses Lasky.

OPENING STATEMENT OF HEARING OFFICER

Hearing Officer: This is a hearing in the Matter of the Certificate of Authority to Transact Liability Insurance of California State Automobile Association Inter-Insurance Bureau.

Before the matter proceeds I should like to read into the record the assignment or designation as my authority to appear as Hearing Officer in this Matter directed to the Insurance Commissioner of the State of California. Subject: Hearing Scheduled in San Francisco on March 5, 1948.

> "In accordance with your request John G. Clarkson, Hearing Officer, Division of Administrative Procedure, is hereby assigned to act as hearing officer for the Insurance Commissioner of the State of California as [fol. 92] required by Government Code, Sections 11500 through 11528, inclusive. This assignment, made pursuant to the powers vested in me by the Business and Professions Code, Section 110.5, is for the period specified above and, for the purpose of any hearing commenced during such period, shall continue until the effective date of the decision in the matter."

It is signed by James A. Arnerich, Director, and is on the letterhead of the Department of Professional and Vocational Standards. It is dated February 26, 1948. If you gentlemen would like to examine this it is here.

Are you ready to proceed, Mr. Fullenwider? I would suggest that you mark for the record as exhibits—although you appreciate, Counsel, that these are not evidentiary but merely the pleadings in the Matter—the Accusation and other papers; Notice of Defense, if any, and so forth.

Offers in Evidence

Mr. Fullenwider: Very well.

I will mark the Accusation in the Matter of the Certificate of Authority to Transact Liability Insurance of the California State Automobile Association Inter-Insurance Bureau, dated February 4, 1948, and signed, Wallace K. Downey, Insurance Commissioner, by Frank Fullenwider, Deputy, as Exhibit 1-A.

Hearing Officer: 1-A.

(Thereupon the document referred to above was admitted into evidence and marked Exhibit 1-A for the Commissioner.)

[fol. 93] Mr. Fullenwider: I will next mark the Statement to Respondent, bearing the same file number and the

same title, directed to the California State Automobile Association Inter-Insurance Bureau, and bearing the same date, February 4, 1948, executed by Wallace K. Downey, Insurance Commissioner, by Frank Fullenwider, Deputy, as Exhibit 1-B.

Hearing Officer: Please.

(Thereupon the document referred to above was admitted into evidence and marked Exhibit 1-B for the Commissioner.)

Mr. Fullenwider: I will next mark the form Notice of Defense in the same matter, bearing same file number, dated February 10, 1948, and executed by the California State Automobile Association Inter-Insurance Bureau, by George Chalmers, Manager, Attorney in Fact, as 1-C.

Hearing Officer: That would be right, thank you.

(Thereupon the document referred to above was admitted into evidence and marked Exhibit 1-C for the Commissioner.)

Mr. Fullenwider: And finally, the Notice of Hearing in the same matter to which there is annexed an Affidavit of Service which, with your permission, I will have attached simply as completing the file. The Notice of Hearing is dated February 24, 1948, executed by Wallace K. Downey, Insurance Commissioner, by Frank Fullenwider, Deputy, setting the Hearing in this matter for this morning at ten o'clock at this place. I offer this as 1-D.

Hearing Officer: 1-D.

[fol. 94] Mr. Fullenwider: That completes the file of preliminary exhibits, Mr. Hearing Officer.

Hearing Officer: Yes, all right, thank you. Well I have received a copy of 1-A, B, and D, but not 1-C. Does 1-C admit any of the statistical data in the Accusation?

Mr. Fullenwider: No. Exhibit 1-C is a form Notice of Defense.

Hearing Officer: No special defense?

Mr. Fullenwider: No special defense filed.

Hearing Officer: All right. You may proceed.

Mr. Fullenwider: Mr. Lasky, may it be stipulated that the facts alleged in Paragraph I of the Accusation, marked Exhibit 1-A, are true?

Mr. Lasky: Yes.

Mr. Fullenwider: Now, Mr. Lasky, in connection with Paragraph II of the Accusation, may it be stipulated that the Insurance Commissioner on the 8th day of December, 1947, approved and issued a Plan for the apportionment among insurers admitted to transact liability insurance of applicants for automobile bodily injury and property damage insurance?

Mr. Lasky: Yes.

Mr. Fullenwider: And in connection with that same Paragraph may it be further stipulated that that Plan is contained in the Administrative Register, Register 7, and comprises Sections 2400 to 2498 of Title 10 of the California Administrative D Code, and that those Sections as contained [fol. 95] in the official State publication, being contained on pages 226.15 to 226.31, may be entered into evidence?

Mr. Lasky: You refer to Title 10, Register VII, of the California Administrative Code?

Mr. Fullenwider: Yes. There is an overlap of one previous Section in the Administrative Code on the page which may not be considered as a part of this Exhibit.

Mr. Lasky: You are referring here to Article 8. So stipulated.

Mr. Fullenwider: Pursuant to stipulation, offering the pages of the California Administrative Code identified in the stipulation, as Exhibit Number 2.

Hearing Officer: And excluding that portion you have indicated.

Mr. Fullenwider: Excluding that portion which appears at the top of the first page and is labeled, Section 2253.

Hearing Officer: To be received and marked Exhibit 2 of the Department.

(Thereupon the document referred to above was admitted into evidence and marked Exhibit 2.)

Mr. Fullenwider: Now, Mr. Lasky, in connection with Paragraph III of the Accusation and Exhibit 1-A, may it be stipulated that the Insurance Commissioner on December 16, 1947 mailed to the Respondent in this matter a copy of the Plan just introduced into evidence as Exhibit Number 2?

[fol. 96] Mr. Lasky: So stipulated.

Mr. Fullenwider: In connection with Paragraph IV of the Accusation, Exhibit 1-A, may it be stipulated that the Respondent only failed to subscribe to the said Plan intro-

duced as Exhibit Number 2, on or about January 19, 1948, or at all?

Mr. Lasky: So stipulated.

Mr. Fullenwider: In connection with Paragraph V of the Accusation may it be stipulated that the Insurance Commissioner on January 20, 1948 mailed a Notice to the Respondent at its address, 150 Van Ness Avenue, San Francisco, 2, California, to subscribe to the Plan admitted as Exhibit 2 herein; that the said Notice was received by the said Respondent on January 21, 1948; and that the Notice required Respondent to subscribe to the Plan on or before February 1, 1948?

Mr. Lasky: Yes.

Mr. Fullenwider: Now, in connection with Paragraph VI of the Accusation, may it be stipulated that the fact set forth in that Paragraph are true?

Mr. Lasky: Yes.

Mr. Fullenwider: The Department rest.

Mr. Lasky: Before the Respondent proceeds with evidence we would like to make a brief statement of our position.

Hearing Officer: All right.

Mr. Lasky: The Statute under which this Plan which [fols. 97-99] has just been placed in evidence as Exhibit 2 was issued and approved by the Insurance Commissioner is unconstitutional. In the first place it is unconstitutional because it deprives persons, and particularly this Respondent and its members, of property without due process of law; and likewise, deprives them of liberty without due process of law. And for that reason it violates the Fourteenth Amendment to the United States Constitution, and particularly, the Due Process Clause thereof. For the same reason it violates Section 13, Article I, of the Constitution of the State of California.

Secondly, as applied to the Respondent in this cause and its members, it impairs an obligation of contract, namely, the contract entered into between the members of this Association and the California State Automobile Association Inter-Insurance Bureau whereby it is agreed that only members of the California State Automobile Association shall be insured. And thereby the Statute violates Section 10, of Article I, of the United States Constitution, and Section 13 of Article I of the Constitution of California. And not only the Statute but the plan issued purportedly there-

under also violates the various constitutional provisions I have already referred to.

[fol. 100] We shall show that the California State Automobile Association Inter-Insurance Bureau was organized in the year 1914 for the purpose of providing insurance solely to the members of the California State Automobile Association; that at that time in pursuance to the statutes which pre-

[fol. 101] ceded the Insurance Code, it filed its power of attorney with the Insurance Commissioner in this office and that power of attorney authorized the attorney in fact to issue policies of insurance that complied with the rules and regulations of the insurance board, this inter-insurance board, the Respondent. Among the rules and regulations of Section 1 was a provision that insurance could only be issued to members of the California State Automobile Association; and that provision, that section was the only provision in these rules and regulations restricting the type of insurance, the type of risk to whom insurance could be issued. We shall show that those rules and regulations, and that power of attorney, remained on file in this office from 1914 until 1925 and were the basis upon which the Respondent operated during that period. We shall show that in 1925 another power of attorney to which was attached the rules and regulations of the Respondent was filed in this office and that those papers contained the same fundamental, basic underwriting policy and that there were no other such restrictions or policies stated. We shall show that that remained on file in this office from 1925 until 1941 and that the Respondent has at all times operated thereunder. We shall show that in 1941 the Respondent filed in this office pursuant to law a further power of attorney with certain rules and regulations attached and that those rules and regulations contained the same restriction, the same fundamental, basic underwriting policy, and that there were no

[fol. 102] others. And that those documents have remained on file at all times since that date, so that ever since the time of its creation in 1914, some thirty-four years ago, the basic, fundamental underwriting policy of the Respondent has been that it would not insure anyone who was not a member of the California State Automobile Association. We shall offer in evidence some other material matters that have a bearing upon due process.

Now, Mr. Fullenwider, do you have available, as agreed, certain documents?

Mr. Fullenwider: Yes. If you will give me a few moments recess, Mr. Hearing Officer, the certifications have just been given to me and I will staple them to the copies and hand them to Counsel.

Hearing Officer: All right. A five minute recess.

(Recess.)

Hearing Officer: We will resume the Hearing in the Matter of the Inter-Insurance Bureau.

Mr. Lasky: The Hearing is resumed?

Hearing Officer: Yes. Resume the Hearing now, please.

Mr. Lasky: I offer as Respondent's Exhibit A, certified copy of Power of Attorney and Application for Automobile Insurance of the California State Automobile Association Inter-Insurance Bureau, certified by Mr. Fullenwider, Deputy Insurance Commissioner, as being a photostatic copy of the face of the Power of Attorney and Application [fols. 103-107] for Automobile Insurance filed with the Insurance Commissioner on the 29th day of June, 1914.

[fol. 108] (Thereupon the document referred to above was admitted into evidence and marked Respondent's Exhibit A.)

Mr. Lasky: I would like to read from Exhibit A. First, before doing so, will it be stipulated you have only certified the front of Exhibit A and that the reverse side, the remainder, is the form of application and not part of the Power of Attorney?

Mr. Fullenwider: That may be so stipulated in connection with that offer and any offer.

Mr. Lasky: Which would be Exhibits B, C, D, E, and F.

Mr. Fullenwider: Proposed exhibits.

[fol. 109] Mr. Lasky: Proposed exhibits, yes.

The Power of Attorney filed in 1914 reads as follows:

> "Whereas, at San Francisco, California, an office has been opened under the name of California State Automobile Association Inter-Insurance Bureau, herein called the Bureau, where certain persons, firms and corporations may exchange indemnity against the loss or damage from certain hazards arising from fire, theft, or collision, and incident to ownership, maintenance and operation of automobile used by them.

"And Whereas, P. J. Walker, Nathan Bell, and E. B. de Golia, constituting the executive committee of the Insurance Board, constituted according to the rules hereinafter referred to, hold Power of Attorney for each of the subscribers to said Bureau, with full power of substitution and revocation.

"And Whereas, (blank) herein known as the subscriber, desires to become a member of said Inter-Insurance Bureau and hereby applies for insurance against the hazards herein indicated to the extent limited and defined in the policy of insurance which shall be issued by said Bureau, for the term of one year, commencing (blank) 191 (blank) at noon and expiring (blank) 191 (blank) at noon, upon the automobile, including its body, machinery and equipment, described herein, which description is hereby declared to be true [fol. 110] and correct and made a warranty by the subscriber.

"Now, Therefore, the subscriber does hereby make, execute, and appoint the said P. J. Walker, Nathan Bell and E. B. deGolia the subscriber's true and lawful Attorney in Fact, with full power of substitution and revocation, and with power in the subscriber's name, place and stead to represent him for the purposes of exchanging with other subscribers to such Bureau indemnity to the extent described in contracts of indemnity executed and delivered to said subscribers against loss or damage incident to the ownership, maintenance and operation of automobiles. Such Power of Attorney shall be in all respects co-extensive with the powers provided, enumerated, granted and confirmed and subject to all the limitations, modifications and restrictions contained in the rules and regulations of the Insurance Board of the California State Automobile Association Inter-Insurance Bureau, which said Board it is understood and agreed shall consist of an equal number of persons with the Board of Directors of the California State Automobile Association to be elected by said Board of Directors and the said rules and regulations are hereby assented to and approved by this subscriber; the said rules and regulations to be at all times accessible for inspection by the subscriber at the office of the Bureau."

I now offer as Respondent's Exhibit B, certified copy of Proposed Rules and Regulations for the Insurance Board [fol. 111] of the California State Automobile Association Inter-Insurance Bureau, certified to be a true and correct copy of the document filed with the Insurance Commissioner on the 29th day of June, 1914. And may I add, it is the document referred to in the Power of Attorney, just read from which was filed upon the same day.

(Thereupon the document referred to above was admitted into evidence and marked Respondent's Exhibit B.)

Mr. Lasky: I desire to read from the first paragraph, number (1):

> "Risks shall be restricted to automobiles of the private pleasure car type. Only members in good standing of the California State Automobile Association, or corporations or firms in which such members are officers or partners may be eligible to apply for insurance in the Bureau. Such insurance shall be limited to not to exceed two cars per member in the case of privately [fol. 112] owned cars, and to not to exceed two cars per membership in the case of cars owned by Corporations or firms, except by special authority of the Executive Committee of the Board."

Will it be stipulated, Mr. Fullenwider, that Exhibits A and B or the original, of which these are certified copies, remained on file with the Insurance Commissioner from the time of filing, June 29, 1914, to date, and that no other documents, powers of attorney, or rules and regulations relating to the California State Automobile Inter-Insurance Bureau were filed with the Commissioner from June 29, 1914 until July 27, 1925?

Mr. Fullenwider: That is a pretty hard stipulation for me to enter into because in 1914 I was but a small lad. I will stipulate to this, which I think is the effect of what you want, that I have examined the file of the Insurance Commissioner on the Respondent and that that file discloses that these two documents were the first Power of Attorney and Rules and Regulations which were filed and that as far as that file discloses no further powers of attorney or rules and regulations were filed until the date just mentioned by Counsel.

Mr. Lasky: In 1925. Well, that stipulation is adequate for the purpose.

I now offer as Respondent's Exhibit C, copy of California State Automobile Association Inter-Insurance Bureau Power of Attorney and Application for Automobile Insurance certified by Mr. Fullenwider as Deputy Insurance Commissioner as being a photostatic copy of the face of the [fol. 113] Power of Attorney and Application for Automobile Insurance filed with the Insurance Commissioner on the 27th day of July, 1925. For the purpose of the offer: So as to continue the story begun on the last two exhibits.

Mr. Fullenwider: Same objection.

Hearing Officer: Same ruling.

Mr. Lasky: Will it be stipulated, Mr. Fullenwider, that the reverse side of this document which you did not photostat was merely a continuance of the form of application?

Mr. Fullenwider: I think I have already made that stipulation.

Mr. Lasky: So you have.

Hearing Officer: The only difficulty was you made the agreement or stipulation with respect to documents which had not been at that time identified in the record. We only marked them off the record.

Mr. Fullenwider: The same stipulation may be made.

Hearing Officer: The same stipulation with respect to Exhibit C. Thank you.

Mr. Lasky: That is received, is it, in evidence?

Hearing Officer: Received and marked Respondent's Exhibit C.

(Thereupon the document referred to above was admitted into evidence and marked Respondent's Exhibit C.)

Mr. Fullenwider: In connection with the exhibit, Mr. Lasky, I don't want to interrupt you, but I would suggest [fol. 114] in the interest of saving time they do speak for themselves and that reading the entire Power of Attorney is somewhat time consuming. I am willing to stipulate if you desire to have it in the transcript, as well as the exhibit, I am willing to stipulate that the reporter may put it in the transcript, merely to save time.

Mr. Lasky: The exhibit will speak for itself. I merely call attention to the fact that the Power of Attorney contains the same provision, that is, "subject to all the limita-

tions, modifications and restrictions contained in the rules and regulations of the Insurance Board of the California State Automobile Association Inter-Insurance Bureau, and the said rules and regulations are hereby assented to and approved by this subscriber," otherwise it will speak for itself.

I now offer as Respondent's Exhibit D, a document certified by Mr. Fullenwider, as Deputy Insurance Commissioner, as being a true and correct copy of the Revised Rules and Regulations of the Insurance Board of the California State Automobile Association Inter-Insurance Bureau, Adopted March 1, 1925, and certified to have been filed with the Insurance Commissioner on the 27th day of July, 1925.

Mr. Fullenwider: Same objection.

Hearing Officer: Same ruling. To be received and marked, Respondent's Exhibit D.

(Thereupon the document referred to above was admitted into evidence and marked Respondent's Exhibit D.)

[fol. 115] Mr. Lasky: And in this connection I call attention to, and desire to read, the short Paragraph (7) of Exhibit D as follows:

> "Risks assumed by the Bureau shall be restricted to automobiles of the private pleasure car and commercial car types. Only members in good standing of the California State Automobile Association or corporations or firms in which such members are officers or partners shall be eligible to apply for insurance in the Bureau."

Hearing Officer: It is the same clause in general as that you read from Exhibit B.

Mr. Lasky: The only addition had to do with the addition of commercial cars, but this provision about restriction to members of the California State Automobile Association is the same.

I now offer as Exhibit E, document certified by the Deputy Insurance Commissioner as being a photostatic copy of the face of the Power of Attorney and Application for Automobile Insurance filed by California State Automobile Association Inter-Insurance Bureau on September 2, 1941. And may we have the same stipulation that the reverse side

which you did not photostat is merely a continuation of the application form?

Mr. Fullenwider: So stipulated.

Mr. Lasky: And the whole of the Power of Attorney is here. I offer this in evidence.

[fol. 116] Mr. Fullenwider: Same objection.

Hearing Officer: Same ruling. To be received and marked Respondent's Exhibit E.

(Thereupon the document referred to above was admitted into evidence and marked Respondent's Exhibit E.)

Mr. Lasky: And without reading the Power of Attorney I call attention to the fact that it has the same restriction, that the power is confined to issue insurance in accordance with the rules and regulations of the Inter-Insurance Bureau.

I now offer as Exhibit F, document certified by the Deputy Insurance Commissioner as being a true photostatic copy of the Rules and Regulations of the Insurance Board of the California State Automobile Association Inter-Insurance Bureau, as Amended to Include Liability and Disability Risks. Adopted September 18, 1941, that document being certified as having been filed with the Commissioner September 2, 1941.

Mr. Fullenwider: Same objection.

Hearing Officer: Same ruling. To be received as Respondent's Exhibit F.

(Thereupon the document referred to above was admitted into evidence and marked Respondent's Exhibit F.)

Mr. Lasky: Without reading, I call attention to the fact that Paragraph (7) of Exhibit F is identical with Paragraph (7) of Exhibit D which was filed in 1925.

Hearing Officer: Will it be stipulated, Mr. Fullenwider, [fol. 117] that between July 27, 1925 and September 2, 1941 no other Powers of Attorney or Rules and Regulations were filed with the Insurance Commissioner by California State Automobile Association Inter-Insurance Bureau?

Mr. Fullenwider: I will have to add the same qualification. It will be stipulated that the file which the Insurance Commissioner keeps on the said Bureau discloses no other documents were filed between those dates.

Mr. Lasky: I now offer as Respondent's Exhibit G a document certified by the Deputy Insurance Commissioner

as being a photostatic copy of the face of the Power of Attorney and Application for Automobile Insurance filed with the Insurance Commissioner on the 1st day of October, 1943 by the California State Automobile Inter-Insurance Bureau. And will it be stipulated, Mr. Fullenwider, that the reverse side which was not photostated was merely a continuation of the form of application?

Mr. Fullenwider: So stipulated.

Mr. Lasky: Will it further be stipulated that at the time this Power of Attorney was filed there was no other set of rules and regulations filed?

Mr. Fullenwider: It will be stipulated that the file shows no other.

Mr. Lasky: So that since September 2, 1941 the files of the Insurance Commissioner show no rules and regulations of this Respondent filed?

[fol. 118] Mr. Fullenwider: That is correct. Yes, so stipulated. Did I make my objection to this last document in as Exhibit D? If not, I now do so on the same grounds as heretofore stated.

Hearing Officer: Why is there such a series of filings? Is it that the rules are changed and that the statutes require a refiling of these rules?

Mr. Lasky: There were some changes in the Rules and Regulations in 1925. Yes, the statute requires any inter-insurance bureau or reciprocal—and I understand the terms to be identical—to file the power of attorney with the Insurance Commissioner. That power of attorney is the basic document under which such an organization operates. You might call it its constitution or basic charter or bylaws. And in 1941 the Rules and Regulations were expanded to extend to liability insurance.

Hearing Officer: I see; the Rules of the Respondent.

Mr. Lasky: That is right. So that what we have done is to place in evidence the basic document under which this organization is operating.

Hearing Officer: You filed some rules or proposed rules, whichever they are, in 1914 and again in 1925. Is that because there were some substantial changes in the rules at that time, or do you know?

Mr. Lasky: I have not examined the rules to see if they [fol. 119] were substantial or not. My purpose was to show that the only restriction in these rules on the type of risk

that has always been accepted is this one, and it has been continued throughout the organization.

Hearing Officer: And the Power of Attorney of October 1, 1943, why was that filed if there was no change in the rules?

Mr. Lasky: Apparently the only thing that was changed there was the form of application which happens to be on the same document as the power of attorney. It is required to be filed and since it was filed we put it in to make the record complete. It adds nothing at all to the 1941 Power of Attorney. It is the same thing.

Hearing Officer: To the objection there will be the same ruling and the document will be received as Respondent's Exhibit G.

(Thereupon the document referred to above was admitted into evidence and marked Respondent's Exhibit G.)

Mr. Lasky: Now, Mr. Fullenwider, do you have here a certified copy of the transcript of proceedings before the Department of Insurance in the Matter of the Public Hearing on the Proposed Assigned Risk Plan which took place in this office and this room on October 20, 1947?

Mr. Fullenwider: I have a copy of the transcript. It is not certified but I will stipulate that it is a true copy of a true and correct transcript and that the hearing reporter signed [fol. 120] the original.

Mr. Lasky: That stipulation will be sufficient and I so stipulate. Do you have with you exhibits which accompanied and were part of that record?

Mr. Fullenwider: Yes, I have the particular ones you asked for.

Mr. Lasky: Do you also have Exhibit D?

Mr. Fullenwider: That was not one of the ones that was requested.

Mr. Lasky: No, it was not.

Mr. Fullenwider: If you want that it will take me a few moments.

Mr. Lasky: I think it might be well to have that here.

Mr. Fullenwider: Might I suggest, Mr. Hearing Officer, that we take our recess at this time?

Hearing Officer: Ten minute recess.

(Recess.)

Mr. Lasky: Mr. Fullenwider, you have now produced Exhibits D, F(1), F(2), G, and H, part of the record we have just referred to?

Mr. Fullenwider: Yes, that is correct. I have provided in the event of all except D—I have provided copies which I will stipulate are true and correct copies of the exhibits. "D" happens to be the original and in the event it is introduced into evidence or marked for identification in this case [fol. 121] I would like to ask the stipulation that it may be replaced with a copy later.

Hearing Officer: That is permissible. We so agree.

Mr. Lasky: So stipulated. Then I offer as one exhibit the Reporter's Transcript just referred to and the exhibits thereto, just referred to.

Mr. Fullenwider: To which we again object on the grounds it is irrelevant and immaterial. It does not prove any of the allegations in the Accusation in this case and as far as can be determined it does not tend to prove or disprove any of the allegations made by Respondent in his opening statement. So it appears to us certainly that in view of the state of the record at this time and the issues which have heretofore been raised, it is not relevant or germane to them.

Mr. Lasky: The proposed offer in evidence does two things: Number one, it shows the position taken by this Respondent at the hearing which was required by law before any plan could be issued or approved by the Insurance Commissioner. It shows the record we made as to the nature of our Rules and Regulations, basic underwriting policy. It shows we asked at that time that our Power of Attorney on file in this office and the attached Rules and Regulations be considered a part of that record. It is certainly admissible for that purpose.

Number two, it is admissible for another reason as well. [fol. 122] We have made the point in our opening statement that that Statute is unconstitutional because it constitutes an unlawful delegation of power. In very brief form we pointed out wherein the standards laid down by the Statute are wholly inadequate. This transcript will show that in the proceedings which took place and on the basis of which the Insurance Commissioner issued a Plan, he was acting not as an administrative officer but as a legislator; that the matters brought before his attention;

that the considerations argued, urged, by his representative who appeared, were not matters that should be considered by an administrative officer. They were legislative considerations. In other words, this is the factual record which supports our contention that the Statute not only unlawfully delegated power, but that the Commissioner issuing his Plan unlawfully exercised power which he should not have offered. It is long; I can not read the whole thing now; but it is obvious it is appropriate and reference can be made when the time comes for arguing the case to the transcript and the exhibits.

Mr. Fullenwider: I confess that after hearing Respondent's position on it, I must renew my objection. Would it be stated, for example, that if Respondent had not appeared at the hearing and had not made points, that then the Respondent was foreclosed from raising constitutional points in a matter such as this where an Accusation is brought against a Certificate of Authority: I think quite [fol. 123] definitely not and, therefore, I reiterate the fact that any objections which were made or anything else in that nature which was made or called to the Insurance Commissioner's attention at his Hearing on this Plan is irrelevant. I also maintain that this offered exhibit is irrelevant to show whether there were sufficient legislative standards. You do not prove that by what took place at an administrative hearing. You prove that by taking the Statute and looking at it from beginning to end to determine whether there were sufficient standards. And you do the same with the Plan that is promulgated. Evidence of this nature simply does not prove, nor tend to prove, the points which Respondent is urging it for.

Mr. Lasky: Constitutional questions often turn upon the facts of reality on which they are set.

Hearing Officer: I note in the second paragraph of the Accusation to which there has been no stipulation, it is asserted that on the 8th of December, 1947, the Commissioner approved and issued a reasonable plan. I think that the proceedings at that hearing probably are admissible to see whether or not the matters considered there do indicate that it was or was not a reasonable exercise of authority, in addition to the constitutional question of whether it is a lawful delegation or lawful exercise of the delegated authority. I will overrule the objection and receive the

Transcript as offered, as Respondent's Exhibit H, which includes the exhibits thereto that have been indicated.

[fol. 124] Mr. Fullenwider: Now, for the purposes of clarity, Mr. Hearing Officer, may we use the symbols "H(1)," "H(2)", et cetera?

Hearing Officer: I think it might be helpful in referring to it. So if you will mark the transcript itself, "H", and the exhibits. Exhibit D would be H(1).

Mr. Fullenwider; The transcript then is "H".

Hearing Officer: "H," only.

(Thereupon the Document Referred to Above Was Admitted into Evidence and Marked Respondent's Exhibit H.)

Mr. Fullenwider: "H".

Hearing Officer: And Exhibit D thereto will be Exhibit H(1) in this proceeding.

Mr. Fullenwider: This has been marked three times now as an exhibit. So if it is agreeable I will put the date 3-5-48 under the other date. And that is the one in which we may substitute a copy.

Hearing Officer: That is correct.

(Thereupon the Document Referred to Above Was Admitted into Evidence and Marked Respondent's Exhibit H(1).)

Hearing Officer; H(2) is the copy of Exhibit F(1) of the transcript and if you date that——

Mr. Fullenwider: I will also mark it 3-5-48.

Hearing Officer: H(2).

(Thereupon the Document Referred to Above Was Admitted into Evidence and Marked Respondent's Exhibit H(2).)

[fol. 125] Hearing Officer: H(3) in this proceeding will be Exhibit F(2) to the transcript of the hearing on the plan, Exhibit H.

Mr. Fullenwider: I will also mark that 3-5-48.

Hearing Officer: If you will in each instance.

(Thereupon the Document Referred to Above Was Admitted into Evidence and Marked Exhibit H(3).)

Hearing Officer: Exhibit H(4) will be Exhibit G to the transcript—and the date.

(Thereupon the Document Referred to Above Was Admitted into Evidence and Marked Respondent's Exhibit H(4).)

Hearing Officer: And Exhibit H(5) will be Exhibit H to the transcript—and date that please.

(Thereupon the Document Referred to Above Was Admitted into Evidence and Marked Exhibit H(5).)

Mr. Lasky: Now, so the record may be clear, it is understood and stipulated, is it not, that this is the transcript of the hearing which preceded the issuance of the Commissioner's Plan?

Mr. Fullenwider: Yes, that is correct.

Mr. Harrison: If your Honor please, we shall call a witness.

Mr. Edwin B. de Golia, called as a witness by the Respondent, being first duly sworn, testified as follows:

Hearing Officer: Your full name, please.

[fol. 126] Witness: Edwin B. de Golia.

Direct examination.

Mr. Harrison:

Q. Mr. de Golia, what is your business?

A. Well, I have several kinds of business, but my principal business is insurance.

Q. And has been for many years?

A. I entered it in eighteen hundred eighty-nine and have been identified with it in all kinds of ways ever since.

Q. And are a member of the California State Automobile Association, are you not?

A. Yes, sir.

Q. And also a director of that association?

A. Yes, sir.

Q. The California State Automobile Association was formed in 1907 was it not?

A. Yes, sir.

Q. I show you a copy of the original Articles of Incorporation of California State Automobile Association produced from the files of that Company. To the best of your belief is that a true copy of the Articles?

A. To the best of my knowledge and belief that is correct, sir.

Mr. Harrison: We offer this in evidence, if the Examiner please, and subject to any correction if it is not a correct [fol. 127] copy, Mr. Fullenwider.

Mr. Fullenwider: We are not making any objection to the fact that it is a copy but we do object to the relevancy in this matter. Bear in mind, Mr. Hearing Officer, that we are pretty far afield. That is not a copy of the Articles of Incorporation of Respondent but what appears to be an entirely separate organization and there has been no showing as yet in the record which would indicate how these Articles of Incorporation would tend to prove or disprove the constitutionality of the Assigned Risk Statute or the Plan itself.

Hearing Officer: I agree, it seems to be somewhat remote unless it is going to be shown that the Respondent here is an affiliate or subsidiary of the Auto Club. I don't know that the Automobile Association charters are relevant.

Mr. Harrison: They are relevant in this respect, if the Examiner pleases, because the policy which has been stated by us in our opening statement is that only persons may be insured by the Inter-Insurance Bureau who are members of the California State Automobile Association, and we shall show the connection between the two in just a moment from this witness.

Hearing Officer: I will mark it "I" for identification at this time then. If it is shown to have a bearing we may receive it but can not receive it now.

(Thereupon the Document Referred to Above Was Admitted for Identification Only and Marked Respondent's Exhibit I.)

[fol. 128] Mr. Harrison:

Q. I show you now what purports to be a copy of the Amended Articles of Incorporation dated in 1929, Mr. de Golia. Will you look at that, please, and state whether or not according to the best of your knowledge and belief that is a copy of the Amended Articles adopted at that time and now in force?

A. To the best of my knowledge and belief that is a copy of Amended Articles in 1929.

Mr. Harrison: We offer the Amended Articles.

Hearing Officer: They will be marked "I(1)" for identification at this time. I assume the same objection will be made to the Amended Articles as the original?

Mr. Fullenwider: Yes, the same objection.

(Thereupon the Document Referred to Above Was Admitted for Identification Only and Marked Respondent's Exhibit I(1).)

Mr. Harrison:

Q. And those Amended Articles adopted in 1929 are still in effect, Mr. de Golia?

A. Yes, sir.

Q. Now, you are also connected with the California State Automobile Association Inter-Insurance Bureau, are you not?

A. Yes, sir.

Q. In what capacity?

A. As first a member of the Board and later on a member of the Executive Committee created to manage the affairs of that Association.

[fol. 129] Q. You are a member of the Insurance Board of the Inter-Insurance Bureau?

A. Yes, sir, the Insurance Board.

Q. And that is the Insurance Board which is referred to in the Rules and Regulations which have been introduced here in evidence as Exhibits B, D, and F, is that not so?

A. That is correct.

Q. Now, how long has the California State Automobile Association Inter-Insurance Bureau been in existence?

A. If my memory serves me it was organized in 1914.

Q. 1914?

A. Yes, sir.

Q. And how long have you been a member of the Insurance Board?

A. From its inception.

Q. How many members of the Insurance Board are there?

A. Five.

Q. Of the Insurance Board?

A. Of the Insurance Board? I beg your pardon. As the directors of the parent organization, as we call it, are members of the Insurance Board, there are twenty-one.

Q. Twenty-one directors of the California State Automobile Association?

A. Yes, sir.

[fol. 130] Q. And there are twenty-one members of the Insurance Board of the Inter-Insurance Bureau?

A. Correct.

Q. And they are identical in person, are they?

A. Yes, sir.

Q. So that since 1914 you have been a member of the Board of Directors of the Automobile Association and also a member of the Insurance Board of the Inter-Insurance Bureau?

A. Yes, sir.

Q. Have you also been since 1914 a member of the Executive Committee of the Insurance Board?

A. Yes, sir.

Q. And who are the other members of that Committee at the present time?

A. Senator Breed, Mr. H. J. Brunnier, Mr. Guido Caglieri, all of this District; and Mr. J. E. O'Neill of Fresno.

Q. So there are five members of that Executive Committee?

A. Yes, sir.

Q. And that is the Executive Committee which is referred to in the Powers of Attorney which have been introduced in evidence this morning?

A. Yes, sir.

Q. Now, I call your attention to the Rule of the Inter-Insurance Bureau, numbered (1), among the Rules which were [fol. 131] adopted in 1914 and which were introduced in evidence this morning as Exhibit B, and particularly to this language, quote, "Only members in good standing of the California State Automobile Association, or corporations or firms in which such members are officers or partners may be eligible to apply for insurance in the Bureau," end quote. You are familiar with that rule, are you not?

A. Yes, sir, that is our Bible.

Q. And has that been the rule and policy of the Inter-Insurance Bureau since the time it was formed in 1914?

A. Yes, sir.

Q. Has the Inter-Insurance Bureau ever deviated from that policy?

A. Not to my knowledge.

Q. Why was it that that Rule was adopted restricting insurance to membership in the California State Automobile Association?

* * * * * * *

[fol. 132] A. Because we wish to furnish to our members, and to our members only, insurance at a reduced price if [fol. 133] possible and under better conditions than could be obtained in the local market, and as we were not organized for profit we could not see the desirability of taking in any but our own members. That was the purpose and sole purpose of organizing that Company, to give them a further service.

Q. That is, to the members of the California State Automobile Association?

A. The members of the California State Automobile Association.

Q. This Insurance Board of which you have spoken, of twenty-one members, is appointed by whom?

A. It is appointed—I am not sure that I am correct about this, but I believe it is appointed——

Mr. Fullenwider: (Interrupting) I will object to the answer by the witness. We are not interested in any conjecture or surmise.

Hearing Officer: Sustained.

Mr. Harrison:

Q. Are you familiar with the procedure by which the Directors of the California State Automobile Association are chosen?

A. Yes, sir.

Q. How are they chosen?

Mr. Fullenwider: I am going to object again on the ground it is incompetent, irrelevant as to what the procedure of choosing the Directors is.

Hearing Officer: Sustained.

[fol. 134] Mr. Harrison:

Q. I will call your attention to Rule (2) of the Rules adopted in 1914, being Exhibit B, to this effect: "The business of the fund shall be subject to the control of the Insurance Board, said Board to be at all times composed

of an equal number of persons with the Board of Directors of the California State Automobile Association, and to be elected by said Board of Directors." Are you familiar with that rule?

A. Yes, sir.

Q. Has it been carried out?

A. Yes, sir.

Mr. Fullenwider: Now, pardon me, might I have a moment to have the first question read back to me? I am trying to get hold of a rule.

(The question was read by the reporter.)

Mr. Harrison:

Q. Is the California State Automobile Association a motor club as that term is used in the Insurance Code?

A. Yes, sir.

Q. Are you familiar with the Powers of Attorney which have been introduced in evidence this morning as Exhibits C, E, G, and A?

A. Well, I am familiar with the Powers of Attorney that have been in force in the operation of the Automobile Association. I presume they are identical.

Q. And copies of which have been filed with the Insur-[fol. 135] ance Commissioner?

A. To the best of my knowledge and belief, yes.

Q. And in the transaction of business by the California State Automobile Association Inter-Insurance Exchange has all of its business been done by the use of those Powers of Attorney?

A. To the best of my knowledge, yes, sir. It is a bureau we call it a bureau and not an exchange.

Hearing Officer: I understood you meant to say bureau when you talked a minute ago—you said "association."

Witness: I think I meant bureau.

Mr. Harrison: He did refer to the Association also, if the Examiner please.

Hearing Officer: Will you read that long question in which exhibits are mentioned and the answer?

(The question referred to was read by the reporter.)

Hearing Officer: Will you change "Automobile Association" in the answer to "California State Automobile Inter-Insurance Bureau."

Mr. Harrison:

Q. And every applicant for insurance, Mr. de Golia, signs a power of attorney in the form shown by those exhibits, does he not?

A. He does if he is accepted.

Q. Yes, in other words, no insurance is issued to anyone without—or, has been issued to anyone without his having signed that power of attorney?

[fol. 136] A. To the best of my knowledge and belief that has been carried out.

Q. Will you state what is the underwriting policy of the California State Automobile Association Inter-Insurance Exchange?

A. The policy was to give insurance to our members provided they were in the judgment of the officers of the Company who accepted the business, good risks, of good character, and who qualified as a good risk as we know it in the insurance circles.

Q. What was the underwriting policy with respect to the insuring of persons who were not members?

A. Who were not members? We could not take them.

Q. And by members, you mean members of what?

A. Of the parent body of the California State Automobile Association.

Q. And that was the body whose Directors choose the Insurance Board?

A. Correct.

Mr. Harrison: I should like to renew at this time the offer of the Articles of Incorporation of the parent body, if the Examiner pleases.

Hearing Officer: I still do not think it is relevant—the fact that there are the same number of directors in the Automobile Association as there are in the Bureau and that the members of the Insurance Board are elected by them.

[fol. 137] Mr. Harrison: And that the benefits of the Bureau are restricted.

Hearing Officer: To the membership of the Association. I think that is not relevant. The documents can remain as "I" and "I(1)" for identification.

Mr. Harrison: That is all then.

Hearing Officer: Any more from this witness?

Mr. Harrison: I am through.

Hearing Officer: Mr. Fullenwider, have you any questions?

Mr. Fullenwider: Yes, I have.

Cross-examination.

Mr. Fullenwider:

Q. Now, Mr. de Golia, did I understand you correctly that you have been not only on the Board but on the Executive Committee of the Respondent, Inter-Insurance Exchange?

A. Yes, sir.

Q. And during what period of years were you on the Executive Committee?

A. Well, it is—on the Executive Committee?

Q. Yes.

A. From its inception.

Q. And continually down to the present time?

A. Yes, sir.

Q. Now, is it the Executive Committee that passes on the risks?

[fol. 138] A. No, sir.

Q. Who passes on the risks?

A. The Manager and his staff.

Q. So that when you were testifying in respect to what the underwriting practice was you were testifying as to what your understanding was rather than as to what you actually knew, is that correct?

A. That is correct, yes. And I might add, as in accordance with the instructions given by the Executive Committee and his staff.

Q. But you do not actually know what risks were passed upon?

A. Not without some particular feature of this one applicant as brought to my attention by some member of Mr. Chalmer's staff or by himself.

Q. Do you know, for example, whether persons who are members of the California State Automobile Association, as distinct from the Bureau, were ever refused insurance because they were not good risks?

A. Yes, sir, I do know that.

Q. You do know that they were?

A. Yes, sir.

Q. And that has been a continuous practice throughout the history of the organization?

A. Yes, sir.

Q. Now, I am going to hand you Exhibits B to, I believe [fol. 139] it is G, inclusive, and I am going to ask you where in the Rules or in the Powers of Attorney appears the authority to refuse those risks?

A. You are asking me something, to examine a document here that is pretty lengthy, sir.

Q. Do you know where that is in the Rules?

Mr. Harrison: Object to it on the ground it is immaterial. The document speaks for itself.

Witness: No, sir, I do not know. If you want me to answer it——

Hearing Officer: Yes, I will overrule the objection. You may answer it. The answer may remain. You do not know is the answer.

Mr. Fullenwider:

Q. I will reiterate the question to have the witness point out where in the Rules that authority is given.

Hearing Officer: You can take what time you need to examine those documents, sir.

Witness: What?

Hearing Officer: You can take whatever time you want to examine those.

Witness: It will take an hour to go all through this. Isn't there some way that can be——

Hearing Officer: You have answered you do not know whether such authority is there. Do you think it is there? [fol. 140] Witness: I do not know if it is there. It has been a policy of the Committee to instruct the Manager to follow ordinarily good underwriting practice in the direction and acceptance of business. It is left to their discretion.

Mr. Fullenwider:

Q. And as far as you know there is nothing in the Rules in that connection?

A. I am not prepared to say yes or no to that.

Q. Now, Mr. de Golia, during the period July 1, 1942 to January 1, 1947 did the Respondent, Inter-Insurance Bu-

reau, accept any risks which were not members of the California State Automobile Association?

A. So far as I know they have not done so.

Q. Now, you know of your own knowledge, do you not, that there was and has been in this State for some years a voluntary assigned risk plan?

A. Yes, sir.

Q. And you know that for the period from July 1, 1942 to January 1947 the California State Automobile Inter-Insurance Bureau was a participant in that voluntary assigned risk plan?

A. Yes, sir.

Q. And you also know, do you not, that there were risks accepted under the voluntary assigned risk plan by the California State Inter-Insurance Bureau which were not members of the California State Automobile Association?

A. The risks were taken and the applicant was then re-
[fol. 141] quired to join the Association.

Q. But the risks were taken first?

A. I do not know that procedure; I do not know how that follows; but I do know the Committee was instructed then to see that the person applying for membership in the Bureau should join the Association.

Q. And it is your testimony then that every member who received insurance through the Assigned Risk Plan with you during the period when the Inter-Insurance Bureau was a participant therein did join the Association?

A. So far as I know, yes, sir.

Q. But here again you are circumscribed in your knowledge of what the Manager and his staff actually did?

A. I did not examine every applicant or every individual case.

Q. What do you understand the term "underwriting policy" to mean?

A. Well, that is rather a broad question. I would say the usual practice that is followed by underwriters who are in the insurance business with regard to whether a man is a good risk financially, whether he is a reputable citizen, and whether he is what might be termed a profitable risk, that is to say, he couldn't have a bad accident record.

Mr. Fullenwider: No further questions.

Hearing Officer: Before we proceed I want to correct the record. I don't know that it is important. I think the

[fol. 142] witness understood your question, Mr. Fullenwider, the last long question. The question asked was whether risks during that period that the Association was participating in that Plan were accepted which were not members. And the answer was "yes." And it is your testimony that thereafter every "member" joined. I think you meant every "insured" or every "applicant for insurance." Is that what you understood the question to be?

Witness: Yes, I thought he was referring to applicants rather than members because members already are eligible to be taken provided he can be assumed to be a good risk.

Hearing Officer: While you were participating in this plan you did accept applications for insurance from non-members?

Witness: And if accepted they were required to become members.

Hearing Officer: But you are not sure of that.

Redirect examination.

Mr. Harrison:

Q. Is this your understanding, Mr. de Golia, that before the policy was actually issued the person had to be a member of the Association?

A. That is my understanding they should do that.

Q. You said something in your cross-examination with respect to leaving the administration of underwriting practice to the Manager and his staff. What did you mean by [fol. 143] underwriting practice?

A. Well, following up the usual precautions and procedures which go with the business, are part of the business of accepting risks.

Q. And passing upon those risks?

A. Passing upon those risks.

Q. Do you draw a distinction between underwriting practice as you have defined it and a fundamental underwriting policy?

A. There is a distinction, yes, sir.

Q. Now, with respect to the fundamental underwriting policy of this Inter-Insurance Bureau, will you define that?

A. The underwriting policy was that we were organized to give our members insurance on their application, and we would then exercise—leave it to our Manager to use

the usual protective measures, you may call them, and not take what we would term a bad risk.

Q. Who fixed that underwriting policy?

A. That was left up to the management.

Q. Who determined what the underwriting policy should be?

Mr. Fullenwider: I am going to object on the grounds the question has been substantially asked and answered, that is cross-examination of his own witness, suggestive, leading.

[fol. 144] Hearing Officer: I think we have a certain amount of leeway. You are covering the same ground I believe. Go ahead.

Mr. Harrison:

Q. Referring to the underwriting policy of restricting the insurance benefits to members, who fixed that policy?

A. The Committee.

Q. And the Manager had nothing to do with it?

A. No, sir.

Q. Did he have any discretion or leeway?

A. No, sir.

Q. Was his discretion confined to the underwriting practice of passing on the risk?

A. Yes, sir.

Q. When did you say you began to do insurance business, Mr. de Golia?

A. Eighteen hundred eighty-nine.

Hearing Officer: Anything further, Mr. Fullenwider?

Mr. Fullenwider: No.

Hearing Officer: It is just about noon. To what hour do you gentlemen want to recess?

Mr. Fullenwider: Is one-thirty all right with you, Mr. Hearing Officer?

Hearing Officer: One-thirty will be all right with me. Recess until one-thirty.

[fol. 145] Afternoon Session—Friday, March 5, 1948

Hearing Officer: If you people are ready we will proceed.
Mr. Lasky: Mr. Aston, will you take the stand, please?

Mr. Thomas George Aston, Jr., called as a witness, being duly sworn, testified as follows:

Hearing Officer: Your full name, Mr. Aston?
Witness: Thomas George Aston, Junior.

Direct examination.

Mr. Lasky:

Q. Mr. Aston, you are the Manager of the assigned Risk Plan that was created by the order of the Insurance Commissioner which is in evidence here?

A. Yes.

Q. You have occupied that position since the Assigned Risk Plan started operation in January of this year, have you not?

A. Yes.

Q. January 17?

A. January 19 it became effective. I was selected by the previous committee in November to serve from the fifteenth of November.

Q. Were you associated or connected with the voluntary assigned risk plan that was in operation for some years in [fol. 146] this State?

A. For a very short period of time, from November of 1947 until the present Plan became effective.

Mr. Fullenwider: Mr. Lasky, I believe that I have agreed to stipulate with you, which I now offer to do, that insofar as anything that is contained in the records of the Assigned Risk Plan, either the old Voluntary plan or the new one, Mr. Aston may testify irrespective of the fact that he was not actually a manager of the old plan until November of last year.

Mr. Lasky: Thank you for that stipulation. I accept it.

Q. And you are the custodian of the records both of the present Plan and of the former voluntary plan?

A. Yes, sir.

Q. Do you have the figures showing the loss ratio of all insurance written during the period of the voluntary plan?

Let me withdraw that question for a moment. It is a fact, is it not, that the voluntary plan was in operation from about the middle of 1942 until the statutory plan—or I will withdraw that—the compulsory plan went into effect in January?

A. Yes.

Q. Now, can you give me the average loss ratio of all insurance written under the voluntary plan for the entire period on bodily injury liability?

[fol. 47] Mr. Fullenwider: Just a moment now. On that question the question can be construed I believe as a preliminary question if it is answered yes or no, and if the witness is instructed to answer it yes or no I will not object. I do intend to object to the follow-up question.

Mr. Lasky: I do think you should answer the question yes or no.

A. No.

Mr. Fullenwider: You do not have those figures?

Witness: Not for the full period.

Mr. Lasky: Q. Do you have it for any period of time?

A. I have it for the period to and including 1945.

Q. Have you any figures for the year '46?

A. No. There has been no call for the experience for 1946.

Q. It has not been compiled.

A. It has not been compiled.

Q. Then from the period from the inception of the voluntary plan in 1942 through 1945 what was the average loss ratio on bodily injury liability insurance written through the voluntary Assigned Risk Plan?

Mr. Fullenwider: Now, at this point we wish to interpose an objection on the ground that the question calls for irrelevant and immaterial matters. Again our objection is three-fold. In the first place this question is immaterial [fol. 148] because it does not tend to prove is immaterial any of the issues in the Accusation. Second, it is irrelevant and immaterial because there has been insufficient foundation laid for this question. And in this connection it is the position of this Department that before this material would be relevant there would have to be a showing that these two plans were identical in their nature. Bear in mind, Mr. Hearing Officer, we are not considering here the old plan. It has gone by the boards. That was a volun-

tary plan. What we are considering here is the new Statute and the new Plan effective January 19, 1948 which was promulgated and put in force pursuant to that Statute. Now, those two plans, may it please the Commissioner, vary widely in their scope. The voluntary plan, for example, sets forth in its first section the purpose of the plan which is "to provide a means by which a risk required to furnish proof of financial responsibility pursuant to and as required by the California Vehicle Code, or that is required to furnish evidence of bodily injury and property damage liability insurance to the California Railroad Commission"—and it covers only those two types of risk, those which are required to furnish proof of financial responsibility pursuant to the California Motor Vehicle Code or those that are required to furnish evidence of bodily injury and property damage liability insurance to the California Railroad Commission. On the other hand, the new Plan, the one which is in evidence as Exhibit 2, is much broader in its scope. Its purpose is to provide insurance to those who are in good faith entitled [fol. 149] to such insurance but are unable to procure it through ordinary methods. And in that connection there are only specific matters definitely alleged in the Plan which will bar a person from the operation, or from being allowed to participate in it. In other words, you have two separate plans. In the first one of which you had to meet a very narrow qualification standard in order to be allowed to come in. You had to be one of those classes to which the law said, "Here, Mister, you have either gotten fouled up with your driver's license or else the Railroad Commission requires this filing, and for that reason you are eligible for this plan." On the other hand, the new one is just as different as night is from day because here it says to the people of California, "We have got a new law now, something that is going to be almost compulsory in its nature. If you can't get insurance and if you so advise us, you can come into our plan unless for one of these very specific things you are not eligible for it." So, we say for that reason, because of the difference in the eligibility rules, because of the difference in the plans, the figures which would pertain to experience under the old plan can have no bearing or relevancy as to the new plan. That is our second specific objection.

Our third specific objection is that this question calls for over-all experience of all carriers which participated

in the plan. It does not confine it to the particular Respond-
[fol. 150] ent whose right to do business is questioned at this hearing. Now, we believe that the experience of all is not relevant. If the purpose of this question is to prove the taking of property or the taking of liberty without due process of law under Section 1, of the Fourteenth Amendment, in this connection I wish to call the attention of the Hearing Officer to certain specific cases. I particularly wish to call the attention of the Hearing Officer to the case of Aetna Insurance Company vs. Hyde, reported in 34 Federal Reporter (2d), 185. This case is known popularly as the Second Missouri Rate Case. And in that case the Missouri Commissioner had set forth by order—provided for certain rate reductions in fire insurance. I will not go into the details of the pleadings because I do not think it is necessary. There was a somewhat involved factual situation in the case. Suffice it for our purpose to say that the Aetna Insurance Company and other insurance companies challenged that action by the Insurance Commissioner. And the question arose in the case where the Insurance Commissioner had made blanket rules and an over-all increase applicable to all carriers. And the court said, and I am quoting now from page 194 of the Federal Reporter:

> "The method of securing constitutional protection therefrom was not by striking down the law as a whole but by according to each individual carrier the right to test the effect of the law upon it—if the result was confiscation the law was invalid as to that particular company, if it was not confiscatory, it was valid as to [fol. 151] the particular company. Such seems to be the view of the Supreme Court as to this section."

And it cites 275 U. S. 440, 48 Supreme Court 174, and 72 Law Edition 357.

Turn to the particular case now which is cited by the lower Federal Court, and that is the Supreme Court case. That case again bears the title Aetna Insurance Company vs. Hyde. This is known, I believe, popularly as the First Missouri Rate Case. The citation I have already given in quoting from the Federal Reporter. You will find the material to which the lower Federal Court made reference on page 364 of the Law Edition; page 446 of the U. S. Reports.

The language—I will just read a brief portion of it; it is hard to quote it without giving the entire background of the case but there are a couple of sentences which are particularly applicable. I will quote:

> "It is not claimed by nor on behalf of any company that when applied to its business, the reduced rates are or would be too low to permit the company to make a reasonable profit or to have just compensation for its contracts of insurance."

And then another paragraph further on, quoting:

> "It has never been and cannot reasonably be held that state-made rates violate the 14th Amendment merely because the aggregate collections are not sufficient to yield a reasonable profit or just compensation [fol. 152] to all companies that happen to be engaged in the affected business."

Now, applying those cases to our situation here, this does not call for the experience of the particular company. This calls for the experience of companies generally, overall statistics. And we submit that under the tests laid down by these courts, it is insufficient and cannot be used by this particular company. If this evidence be admissible at all, or if evidence of this nature be admissible at all, it must be admissible as respects this particular organization and not any general figures as to carriers in general.

Mr. Lasky: Now, if the Examiner please, if there were any merit whatever in the objection it would go not to the admissibility of this evidence, but its weight. We contend here that this Statute violates the Fourteenth Amendment of the U. S. Constitution and a comparable volume of the State Constitution depriving us of property and liberty without due process. It purports to compel an insurer to take risks that it does not want to take, enter insurance contracts that it does not want to enter, and thereby pay out losses that it does not want to pay out. Here we have the case of a group of individuals who are banded together—careful drivers. They banded together to insure themselves, and the law purports to require them to insure someone else. From the nature of the Assigned Risk Plan it is obvious that these are risks which are greater than the risks that the insurers would be voluntarily

[fol. 153] willing to take. Now, it is impossible to put into evidence what effect the Plan has in the future because that is all in the future. We can only give the experience of the past for such light as it throws on this problem.

Hearing Officer: I think I can agree with part of what each of you has said. To show whether or not, as you contend, it is an unlawful taking of property without due process to force these risks upon the Respondent is the thing that must be determined in the final analysis of the constitutional question. But I do not know whether it requires us to receive evidence of experience of all members of the voluntary plan or whether it shouldn't be limited to this.

I have a question in my mind and I would like to ask—maybe you gentlemen can enlighten me. We have the transcript of the Hearing preceding the adoption of the Plan. Wasn't this sort of thing the material that was furnished at that time at the Hearing before the Commission promulgated its Plan?

Mr. Lasky: Not to my knowledge.

Hearing Officer: I think that strictly speaking it could be said there is a very limited issue here. That is, the Plan having been adopted I might take the attitude that the Plan is in accordance with the requirements of the Statute and then the only question is, did this Respondent comply as required by Statute or not. But if that were to be the issue, in the light of the stipulations that opened this record the [fol. 154] decision might be relatively easy and I do not know how much of this sort of thing that you are now offering should go into this record or how extensive it is going to be before this matter is submitted. It is a question of weight, as you say, and I do not know whether we should have figures as to all experience of companies prior to 1945, prior to the voluntary plan.

Mr. Lasky: Let me answer that one with respect to whether the experience should be for all insurers or our people. Perchance in the past whether one risk was assigned to one insurer or another, the character of these risks and the loss that would be sustained from taking them, the judgment that would be based upon the accidental assignments to one party in the past would be worth little value. But if you take it upon the history of all those involved it throws light on the workings of those in the future. Now, another objection has been raised that perhaps the

plans were different. I think the evidence on that will show that if there are any differences between the two they are minor and that, in fact, the loss ratio is likely to be greater on the present Plan than the other. I think the evidence is admissible and the weight can be determined only after the evidence is in.

Mr. Fullenwider: I can not allow that last statement of Counsel to go unchallenged. I think the judgment would have to be the other way. In the old plan, I am sure, most of them were people that had been convicted of various [fol. 155] offenses and by reason of that conviction had to furnish certificates of insurability before they got their driver's license. It is quite obvious that the new Plan is not limited to that class of business but includes more of the public generally. And obviously the experience under the old plan because of its nature will be bad because you are taking people who have actually been convicted and you are now comparing that plan with the present plan where it may be age group, race, or a minor physical handicap that is going to bring them into the plan. I think your underwriting experience is going to be exactly contrary.

Mr. Lasky: Counsel is indulging in cross-examination upon this subject.

Hearing Officer: Well, I think whether it is cross or direct each of you has asserted matters which might be evidence except I know they are not. It is argument. It seems to me the offer is a little bit too remote for warranting the acceptance here because of remoteness in type, difference in the plans. I will sustain the objection. If you would like to make an offer of proof of what you intended to prove in support of your statements of reasons and your argument, you may make that.

Mr. Lasky: I will make an offer of proof that under the voluntary plan the experience from its inception in 1942 through the end of 1945 for liability on bodily injury was .502, and that offer I understand is rejected.

[fol. 156] Hearing Officer: That offer is rejected for the same reasons that I sustained the objection to the question.

Mr. Lasky: Pardon me, I gave the wrong figure. I withdraw that. The offer is that the figure is .799, rather than .502.

Q. Now, Mr. Aston, can you identify the Voluntary Plan if you were to see a copy of it?

A. Yes.

Mr. Lasky: There have been references, if the Examiner please, as to what the Voluntary Plan was. That is not of record yet and we had better make it of record.

Hearing Officer: That is right.

Mr. Lasky: It is stipulated, is it not, Counsel, that the document I have in my hand and which I now offer as Respondent's Exhibit next in order is a true copy of the Voluntary Plan that was in effect from the middle of 1942 until January of this year, 1948?

Mr. Fullenwider: Reserving objections to relevancy and materiality it is so stipulated.

To the offer I do object on the grounds it is incompetent, irrelevant and immaterial, and does not have any bearing on the issues in this case.

Hearing Officer: All right. The document will be marked "J" for identification. I will sustain the objection at this time on the grounds stated. It seems to me it is a part of the matter to which you have just addressed yourself, in [fol. 157] the offer of proof, but I will mark it for identification.

(Thereupon the document referred to above was admitted for identification only and marked Respondent's Exhibit J.)

Mr. Lasky: It was objected that our other evidence was not pertinent because the two plans might be different. I make this offer to show the similarity of those two plans in order to show the offer of proof should be received.

Hearing Officer: The statements by you as to the similarity and the statements of Mr. Fullenwider were merely an argument on the other question. I do not think we need to incumber the record by going into the original plan. I am letting you make an offer and marking the documents for identification because in the event I am wrong Section 11523 of the Administrative Procedure Act provides that in the event there is an adverse decision the record is supposed to include exhibits admitted or rejected. So I am marking them for identification and suggesting an offer of proof. So anything you think is relevant will be made a part of the record for the purpose that if an appeal is necessary or desirable—without predicting the result of this proceeding. I think that is too remote to the issue as I see it here. I think I understand your purpose. You want to show the

experience of that Plan and show the experience of the Respondent and that the two are unfavorable toward the Respondent, I assume. And therefore, depending on whether your argument is correct or Mr. Fullenwider's is, [fol. 158] as to whether the relative exclusions within the old Plan, so-called, and the new are greater or less, the comparison between your loss ratio and that which you just offered to prove would be greater or less depending on how the thing goes.

Mr. Lasky: Now, in view of what I understand the Examiner's ruling to be, there are some other questions I wanted to ask of this witness so as to show whether the loss ratio under the present Plan would be equal, higher, or higher under the voluntary. Shall I make an offer of proof or ask the questions.

Hearing Officer: You can ask the questions and if Counsel is going to object to them—what is your attitude, Mr. Fullenwider? Are you going to object to that nature of evidence on the same grounds?

Mr. Fullenwider: I am unable to say, Mr. Hearing Officer.

My Lasky:

Q. Now, Mr. Aston, under the old Plan, the Voluntary Plan, a large proportion of the risks which were taken, assigned, and written, were of those who were convicted of drunkenness, is that not so?

A. Yes.

Q. And is it not so that with respect to those the basic premium before the Assigned Risk surcharged was fifty per cent greater than the premium for ordinary insurance?

A. The Manual rate for certified risks which had to file as a result of drunken driving was fifty per cent increase.

[fol. 159] Q. Then a considerable portion of the assigned risks under the Voluntary Plan consisted of those who had been convicted of excessive speed or recklessness resulting in property damage or injury to persons, is that not right?

A. Not so many, very much smaller proportion.

Q. Very much smaller proportion than those convicted of drunkenness?

A. Oh yes.

Q. And is it not a fact that the Manual premium on such risks before the assigned risk surcharged was twenty per cent greater than the premium for like insurance?

A. That is correct, yes.

Q. Now, is it not also true that under the Assigned Risk Plan the other risks were substantially minors and those who had failed to pay judgments?

A. Yes.

Q. And in such case the Manual rate prior to the addition of the assigned risk surcharge was five per cent greater than the normal rate for like insurance?

A. That is correct.

Q. Now, it it not true that the great bulk of the assigned risks under that Plan were for drunkenness and fell under the fifty per cent addition?

A. The great proportion.

Q. Yes. So that would it not be fair to say that of the [fol. 160] insurance that was written under the Voluntary Risk Plan the average premium rate was about 140 per cent of the average rate, greater than the rate for like insurance? In other words, most of it fell in the 150 per cent classification, some in the 120 per cent, and some in the 105 per cent; but if you average it wouldn't most of it be near 140 per cent?

A. I have never made such a calculation. I could not testify as to the correctness of that statement.

Q. But you do say that the bulk of the assigned risks written under that Plan were in the 150 per cent classification?

A. They were increased 50 per cent plus a surcharge.

Hearing Officer: That is not in answer to your question, Counsel, if I may suggest it. The question is were not the bulk in the 150 per cent classification.

Mr. Fullenwider: I am going to object to the question, that it is unintelligible and that the substance of it has already been asked and answered.

Hearing Officer: I don't know—I will overrule the objection but I think you should clarify the question or the witness should answer it. I think his answer did just what Mr. Fullenwider suggests, gives information that is already in the record. I don't think that is what the question called for. He said he had not made the calculation about 140 per cent, and then you are trying to get him to say that [fol. 161] the bulk of it is in the 150.

Mr. Lasky: I will reframe the question.

Q. Would you say that better than one half of the policies issued under the Voluntary Assigned Risk Plan were of a type that carried 150 per cent premium?

Mr. Fullenwider: Just a moment, please. We are going to object on the ground that all this is incompetent, irrelevant, immaterial. I have allowed this to go on just as much as I felt I should in order to see what was to develop but I can not see where those loss ratios under the old plan and extensive examination of them are going to prove anything that is before us in this case and with the new plan. The fact that there were Manual surcharges under the old plan has no bearing on the new Plan. There is no basis, no reason for this questioning.

Mr Lasky: I will explain what the purpose of it is.

Hearing Officer: I think you have already explained the purpose, Counsel. It was only that Mr. Fullenwider desired, I thought, to hear this line of questioning as to whether or not it was relevant, and now he does not think so. Because this witness, although he has custody of the books, indicated with respect to some of these things he has not made the calculations, but is just speculating, it might be better for you to make an offer of proof if you have any exact schedule of calculations there. And I understand that this is to be preliminary to your showing the actual [fol. 162] experience of the Respondent.

Mr. Lasky: That is right.

Hearing Officer: And from those two positions argue that therefore assuming—as you think want to assume—in your argument that the new plan is comparable to the old, that then the second would be unfavorable to you. Without due process, I think if you make your offer of proof that would be sufficient for this record and I would sustain objections to it because I understand that is your theory and I have sustained objections to the introduction of the old plan and have indicated that I think it is too remote for this Hearing and the issues that are before us.

Mr. Lasky: Now, I have not explained in full the purpose of this particular offer.

Hearing Officer: You may if you want to make further explanation, or an explanation.

Mr. Lasky: I shall. And then I will make the offer. It has been suggested by way of suggestion that under the old plan there were certain limited types of risk that were particularly bad and therefore the experience therein would

not be a guide to what the experience would be under the new Plan where the experience would be more comprehensive. The proof I am now offering shows that on these restricted types under the old plan there was a premium surcharged. So that when you take that into consideration, and basing it upon the ordinary premium rates, the [fol. 163] loss ratio under the old plan would be in excess of 100 per cent. The loss ratio will be just about the same as it was under the old plan. The apparent difference between the two will not result in any differences of loss ratio.

Mr. Fullenwider: Counsel in that connection overlooks the new Plan, Exhibit 2 in evidence, Section 2460, which says:

> "Each risk assigned under this Plan shall be subject to the rules, rates, minimum premiums, rating plans and classifications which the insurer to which such assignment is made normally applies in this State to risks not subject to the Plan, but such insurer may make a uniform additional charge of 10% for long haul trucking risks and of 15% for all other risks."

You will notice that Counsel in his questions brought out that these were surcharges in addition to which the surcharges under the Plan. Now, the new Plan certainly permits the same surcharges because it says, "minimum premiums, rating plans and classifications which the insurer to which such assignment is made normally applies in this State . . ." So that is why I say this line of testimony is irrelevant, immaterial.

Mr. Lasky: The fact that the risks under the old Plan were of a particular type would not affect the loss ratio as compared to the new Plan because there the premium was greater and with a loss ratio still high, despite a high premium, if on all those where the premium is lower the ratio [fol. 164] is not going to go down any, it is going to go up. This could be shown by an arithmetical calculation, but I have explained the purpose of the offer.

Mr. Fullenwider: It follows that the insurer will follow the same surcharges under the new Plan and there will be no lowering of premium as Counsel anticipates.

Hearing Officer: I am not an insurance expert and I do not know how the mathematical calculations would affect

it but I think you might go ahead with the offer of proof. However, I sustained the objection.

Mr. Lasky: I offer to prove through the witness and the records he has, or is stipulated to have available, that the insurance that was written under the Assigned Risk Plan was of a character that averaged out on the premium over 140 per cent of the normal premium rates applicable to similar insurance.

Hearing Officer: You are speaking of the first?

Mr. Lasky: That is all we have any records of, yes.

Hearing Officer: The voluntary plan. All right. The offer is rejected.

Mr. Lasky:

Q. Now, Mr. Aston, do you have the figures to show the amount, number of risks assumed under the old Voluntary Plan?

A. Yes.

Q. It is a fact, is it not, that the average number of assignments under the Voluntary Plan from 1942 to January [fol. 165] 17, 1948 was 230 per month?

A. Correct.

Q. Now, under the present Plan since January 17, 1948, is it not a fact that the number of applications have been to date 854?

A. No, that was until February 27, it was 800.

Q. Up to February 27, 854. And do you not estimate that the number of applications and assignments that will be made under the Plan will approximate around two thousand a month under the present Plan?

A. One thousand a month is my estimation.

Q. I call your attention to an article in the "Underwriters' Report" for January 1, 1948 where you are quoted as saying that the number of assignments under this present law are expected by you to be nearly two thousand a month. Did you make that statement?

A. No, I did not make that statement.

Q. That is erroneous?

A. Yes, it is. I had no basis on which to make a statement like that in the first place but I recall——

Q. Then you testify that your estimate is that there will be about one thousand a month?

A. About one thousand a month.

Mr. Lasky: That is all.

Hearing Officer: Cross-examination?

Mr. Fullenwider: Might I ask for a short recess before [fol. 166] I determine the extent of cross-examination?

Hearing Officer: Yes, recess until two-fifteen. That is about eight minutes.

(Recess.)

Hearing Officer: Will you resume the stand, Mr. Aston, please.

Cross-examination.

Mr. Fullenwider:

Q. Mr. Aston, you have testified that you have been Manager of the Assigned Risk Plan, first the old one, voluntary one, and then the new statutory one, since November of last year, that is correct, is it not?

A. Yes.

Q. And previous to that had you had any insurance experience?

A. Approximately twenty years insurance experience.

Q. And of that twenty years insurance experience what was the last position that you held?

A. I was Superintendent of the Casualty Department for the Central Surety and Insurance Corporation.

Q. And for how many years did you hold that position?

A. Four years—approximately four years.

Q. And has your twenty years experience been spent in any particular field?

A. No, it has varied considerably. I had claims experience and a considerable part of the time my experience [fol. 167] has been in underwriting field supervision, and also in production work both as a local agent and general agent, and then in the development of production with the company.

Q. And has that twenty years experience been with any particular companies or group of companies or class of insurance? In other words, writing life, fire and casualty, or what?

A. It has been primarily casualty insurance and automobile.

Q. Including automobile?

A. Including automobile, and some material damage such as automobile.

Q. Automobile material damage. Has it included automobile bodily injury?

A. Yes, all types of casualty insurance.

Q. You have had underwriting experience in those lines, have you?

A. Yes.

Q. Now, during your twenty years have you been in contact with insurance casualty underwriters generally?

Mr. Lasky: If the Examiner please, I am going to object now. This is not proper cross-examination. It is not within any issue raised on direct. On direct the witness was asked whether he was custodian of records and what the records showed, and what the records showed was excluded as not being proper. This goes into some other subject. We [fol. 168] sought to get some statistical information of which he was the custodian.

Hearing Officer: This may be preliminary but I think it has probably gone far enough. I will sustain the objection to it.

Mr. Fullenwider:

Q. Now, Mr. Aston, from your experience in the insurance field do you know what the term "underwriting policy" means to insurance men generally?

Mr. Lasky: I object to that as not being cross-examination at all. This witness was not asked about that subject on direct examination.

Hearing Officer: I will sustain the objection on that ground but we are also interested in getting evidence that is relevant. I don't know that we need to show that he is the Department's witness or Respondent's witness. I think this man's experience and position, his understanding of that policy, might be helpful. Answer the question, Mr. Aston.

Mr. Lasky: I object on the ground it calls for this witness's conclusion of law. What the Statute means by underwriting policy is a question of statutory conclusion.

Hearing Officer: I overrule the objection I think but I would like to hear the question read.

(The question was read by the reporter.)

Hearing Officer: Objection overruled.
Witness: Yes.

Mr. Fullenwider:

Q. And will you tell us what that term means?
[fol. 169] A. Underwriting policy is policy based on underwriting judgment of the hazard of a particular risk, usually divided between the moral risk and the physical risk, on which an underwriter bases his attitude as to the acceptance or rejection of the particular risk.

Mr. Fullenwider: No further questions.
Hearing Officer: Do you have any further questions, Mr. Lasky?
Mr. Lasky: Yes. I regard the questions just asked as direct examination of the Department's witness and want to cross-examine on that.
Hearing Officer: I don't think we have characterized it by any special name. If you have any questions, go ahead.

Redirect examination.

Mr. Lasky:

Q. Mr. Aston, if underwriting policy is judgment based on a hazard of the risk, then any determination that a risk is not a good one to take would in your opinion be within the term "underwriting policy?"
A. Well, it is according to on what basis your premise is as to whether or not it should be taken. If it is a question of the hazard presented by the risk, its size, from the question of either moral hazard or physical hazard—then my answer would be yes.
Q. In other words, any basis upon which an underwriter determines that a particular applicant is not a good hazard [fol. 170] is in your opinion a matter of underwriting policy?
A. Yes.
Q. Then if that be true, Mr. Aston, under the Statute which provides that insofar as possible assignments under the Plan shall be consistent with the underwriting policies of each subscriber, would that not mean that no risk can be assigned to any underwriter if in his opinion it is a bad risk?

A. No, I don't construe it that way at all.

Q. Where do you draw the line of distinction?

A. Well, because a risk is an assigned risk, necessarily comes to the Assigned Risk Plan, because it is not a normal risk. Now, if only a normal risk could be assigned under the Plan the Plan would have no purpose.

Q. Precisely.

A. So my interpretation of this particular law or section of the law is that the Manager insofar as possible should assign risks under the Plan in accordance with the underwriting policies of each particular company. But the Manager does not necessarily have to do that because it might preclude him from making any assignments under the Plan.

Q. Now, Mr. Aston, you have just said that any basis upon which an underwriter determines that a risk because of its hazard should not be placed—it is a fact, is it not, that any risks that come through the Assigned Risk Plan are of such a hazard in nature that insurers will not accept them voluntarily?

[fol. 171] A. Yes, that is true, because if they haven't tried to place them in the normal market they are not eligible to come into the Plan.

Q. So, under your definition of what the Statute means by underwriting policy, risks under the Assigned Risk Plan are contrary to the underwriting policies of the insurer or they couldn't come through the Assigned Risk Plan at all?

A. Yes.

Mr. Lasky: That is all.

Hearing Officer: Any other questions?

Mr. Fullenwider: No, no further questions.

Hearing Officer: Mr. Aston, you may be excused.

Mr. Lasky: I will call Mr. Chalmers.

Mr. George Chalmers, called as a witness, being first duly sworn, testified as follows:

Hearing Officer: Your full name?

Witness: George Chalmers.

Hearing Officer: All right, you may be seated.

Mr. Lasky: Before I interrogate this witness, there was something the Examiner said a while ago that I may

have misunderstood concerning the stipulations at the beginning of the case and therefore the issue was: Were we obeying the Plan. I would like to make our position clear. We do not stipulate that the Insurance Commissioner has issued a Plan under the Statute. We merely stipulated [fol. 172] that the Insurance Commissioner issued a particular document which is printed at a particular place. We certainly may raise the issue that the Plan was not issued in pursuance to the Statute and that the Statute itself has no constitutional effect.

Hearing Officer: I understood that you stipulated that on the 8th of December 1947 the Insurance Commissioner did approve and issue a Plan found in Section 11620 and following.

Mr. Lasky: That is right but we do not stipulate to the language of Paragraph II of the Accusation at all. We have changed the language. We have stipulated that the particular document that appears in that particular section——

Hearing Officer: Which is called a Plan, and I suppose is a Plan, although your contention is that the Statute does not authorize him to promulgate such a Plan as he did.

Mr. Lasky: And that the Statute itself is without legal effect.

Hearing Officer: All right.

Mr. Lasky: That is clear?

Hearing Officer: I understand that and if I said anything other than that I did not intend to.

Mr. Lasky: I was not sure I caught it on the fly. I wanted to be sure the record did not misstate our position.

[fol. 173] Direct examination.

Mr. Lasky:

Q. Mr. Chalmers, you are the Manager of the California State Automobile Association Inter-Insurance Bureau?

A. Yes, sir.

Q. You have occupied that position ever since the beginning of the Bureau in 1914?

A. That is correct.

Q. Now, Mr. Chalmers, during that entire period of time have all applicants, or people who have been insured

by the Bureau, executed before insurance was issued to them a power of attorney in the form of the particular one that was outstanding at that time in the form here in the exhibits?

A. Yes, that is right.

Mr. Lasky: Now, I offer to prove through this witness—and I make the offer of proof in view of the past rulings——

Mr. Fullenwider: Pardon me just a moment, I assign this as being somewhat out of order. There has been no objection raised as yet.

Mr. Lasky: All right, I will ask the question. I thought I could speed it up.

Q. Do you have, Mr. Chalmers, the figures showing the loss ratios of the California State Automobile Association Inter-Insurance Bureau for the period 1942 through the year 1945 on the bodily injury?

[fol. 174] A. Yes, I do have that.

Q. What is the average figure for the loss ratio for that period of time?

Mr. Fullenwider: Pardon me just a moment. Would you read the preliminary question back to me?

(The question was read by the reporter.)

Mr. Fullenwider: That calls for bodily injury only and it calls for not under the Plan but generally. We will object to it on the ground it is incompetent, irrelevant and immaterial; has no bearing; proves or disproves none of the issues of this case.

Hearing Officer: Objection sustained. Now you may make your offer.

Mr. Lasky: I will make my offer of proof that the loss ratio, the average for the period of time, 1942 through 1945, of the California State Automobile Association Inter-Insurance Bureau on bodily injury liability insurance was .502.

Witness: What do you want?

Hearing Officer: There is no question to you, Mr. Witness.

Witness: Yes, I know, but I wanted to know if you wanted to correct your——

Hearing Officer: I don't know whether that is on the record or not, Mr. Lasky, but your witness says you are in error.

[fol. 175] Witness: You should have said that the loss ratio during that time on bodily injury—the loss ratio, the ratio of losses incurred on premiums earned including allocated expenses was the figure that you gave.

Mr. Lasky: Well, just a moment please. Your insurance written during that period of time—did you write any insurance of a character that took the 150 per cent premium?

Mr. Fullenwider: Just a moment now. Before we go on I would like to make a motion that the aside statement which came from the witness in respect to the loss ratio of .502 be stricken from the record or else that it be ruled to be simply an amendment of the offer of proof.

Mr. Lasky: I think that is perfectly appropriate. I will amend the offer of proof.

Hearing Officer: To include the witness's statement of the basis of that figure.

Mr. Lasky: The only change, I understand, is that it included allocated claim adjustment expense, and I amend the offer of proof to include that change, yes.

Mr. Fullenwider: And may it be clear in the record that that statement of record is not evidence in this case?

Hearing Officer: Part of the offer of proof and not evidence.

Mr. Harrison: Has the Examiner ruled on the offer?

Hearing Officer: Oh, I'm sorry, I didn't. The offer of [fol. 176] proof is rejected for the reason stated and sustained in the objection to the preceding testimony.

Mr. Fullenwider: Now, this last question on whether they wrote any business that was 150 per cent, well, again I object on the ground it is irrelevant to any of the issues in this case.

Mr. Lasky: The only purpose is to show the figures are comparable in the case of this organization and of the Assigned Risk Plan, the Voluntary Plan we are talking about—comparable things.

Mr. Fullenwider: How can they be talking about comparable things when he takes an over-all loss ratio, and assume that it includes some of the 150 per cent, and he says, "Now, compare that with something that isn't overall with everything that is in the Assigned Risk Plan."

Mr. Lasky: It shows the disparity between the two is even greater than they appear in the figures. In other words, the confiscation is greater.

Hearing Officer: This last question—I am trying to see the relevancy of this one that the argument on the over-all theory concerned. Maybe that would help me if I understood it a little better. He said here, started to say—then you made an offer of proof—that the average loss ratio, and I assume that was on all business, was .502. And then your question, does this include any 150 per cent premiums. Well, I would think it did.

[fol. 177] Mr. Lasky: The question I desire to bring out is whether they wrote any of that character. I don't want to indicate to the witness what I expect his answer to be on it.

Hearing Officer: All right, I will overrule the objection if that is the purpose.

Mr. Lasky:

Q. During that period of time did you write—what proportion of your business was of that character?

Mr. Fullenwider: Just a moment. We are going to have to object that this is again irrelevant. This has nothing to do with assigned risks.

Mr. Lasky: It simply deals with anything they had where a drunken driver was involved.

Hearing Officer: You can make another offer of proof as you did with the last witness. He gave some of those figures, 150, 125 and 105, and then you made an offer of proof. I think for the same reasons I will sustain the objection and you can make an offer of proof.

Mr. Lasky: All right, I offer to prove that from 1942 through 1945 substantially all the liability insurance written and which is entered into our loss ratio figure which we offered to prove was of the character that took 100 per cent premium only and nothing in excess thereof.

Hearing Officer: All right, go ahead.

Mr. Harrison: What ruling does the Examiner make on that offer?

[fol. 178] Hearing Officer: I'm sorry, I keep forgetting to make the ruling. I reject the offer.

Do you want to ask this witness any questions, Mr. Fullenwider?

Mr. Fullenwider: No, no questions.

Hearing Officer: You may be excused, Mr. Chalmers.

Mr. Lasky: Mr. Examiner, I would like to amend the offer of proof that we made when Mr. Aston was on the stand with relation to the point—ratio figure of .799, to state that also included allocated claim adjustment expenses. May the offer be deemed amended in that respect?

Hearing Officer: Yes, and the same ruling with regard to it.

Mr. Lasky: All right.

Mr. Harrison: Well, now, I neglected to offer those Bylaws when I offered the Articles.

Hearing Officer: Have there been amendments to those Bylaws?

Mr. Harrison: No, they are up to date as amended.

Mr. Fullenwider: Your other witness isn't here, Counsel. Maybe Mr. Chalmers can identify it.

Mr. Harrison: I will ask him.

Mr. Fullenwider: No objection to the recall of Mr. Chalmers.

Mr. George Chalmers, the witness formerly under examination, resumed the stand.

[fol. 179] Mr. Harrison:

Q. Mr. Chalmers, I show what purports to be the Bylaws of the California State Automobile Association as amended. Will you look at those. According to the best of your knowledge and belief that is a true copy of the Bylaws?

A. Yes, I recognize them as such.

Mr. Harrison: We offer them in evidence.

Mr. Fullenwider: Before making my objection I would like to look at them. (Examines document.)

We will object to the offer on the same grounds stated for the offer of Exhibit I and I(1), the Articles of Incorporation, on the grounds they are irrelevant to this proceeding.

Hearing Officer: The objection will be sustained but the document may be marked "1(2)" for identification.

(Thereupon the Document Referred to Above Was Admitted for Identification Only and Marked Respondent's Exhibit I(2).)

Mr. Harrison: That is all, Mr. Chalmers.

Mr. Lasky: That is the Respondent's case.

Hearing Officer: Anything in rebuttal or further for the Department?

Mr. Fullenwider: Yes. Again might I have two minutes?

Hearing Officer: Two minutes will be all right. We will have a five minute recess—two for you and three for me.

[fol. 180] Hearing Officer: We resume the Hearing now. Is there anything—I think you indicated that was the Respondent's case. Is there anything further for the Department?

Mr. Fullenwider: Yes, I would like to call Mr. Lloyd.

Mr. Cecil C. Lloyd, called as a witness, being first duly sworn, testified as follows:

Hearing Officer: Be seated, and your full name. I guess everyone knows it.

Witness: Cecil C. Lloyd.

Direct examinaiton.

Mr. Fullenwider:

Q. Your address, Mr. Lloyd?
A. My business address?
Q. Yes.
A. 444 California Street, San Francisco.
Q. By whom are you employed?
A. United States Fidelity and Guaranty Company.
Q. In what capacity?
A. Assistant Manager of the San Francisco office.
Q. Approximately how long have you been in that capacity?
A. Since the first of July, 1947.
Q. Have you had previous insurance experience?
A. Yes, I have.
Q. What is that previous experience—was it with an [fol. 181] insurance company?
A. Yes, it was.
Q. And with whom?
A. Hartford Accident and Indemnity Company.
Q. What was your last position with that Company?
A. It was Assistant Superintendent of Liability and

Workmen's Compensation Department of its metropolitan office.

Q. How long were you with the Hartford?

A. Fourteen years as I recall.

Q. In your education did you do any specializing, receive any specialized courses in insurance?

A. Yes, I did.

Q. And will you state in general what type of a course that was.

A. I took Professor Mowbray's insurance courses—all of them—at the University of California.

Q. Now, your experience that you have had over a period of some sixteen years with insurance companies, has that experience dealt with underwriting?

A. Most of the entire time it dealt with underwriting.

Q. And the time you have put in in underwriting, has any of it been put in in connection with bodily injury liability insurance? Would you say a substantial portion?

A. No, I can't say it has been a substantial portion of it.

[fol. 182] Q. Approximately how long?

A. Oh, I have been in touch with it to a degree for over a period of ten years but not actively handling the routine detail of it.

Q. Do you know what is meant by insurance men generally by the term underwriting policy?

Mr. Lasky: I object to that as being immaterial, it calls for the conclusion of the witness.

Hearing Officer: Overruled.

Mr. Fullenwider:

Q. And will you tell us what you understand the term underwriting policy to mean?

Mr. Harrison: Same objection.

Hearing Officer: Same ruling.

Witness:

A. My understanding of underwriting policy would be.

Hearing Officer: Just a minute, is that the question? Was not the question, do you know what the general understanding of that term is? Wasn't that your question or is

it this particular witness's understanding. Read the question.

(The first question was read by the reporter.)

Witness:

A. I believe I do.

Mr. Fullenwider:

Q. Will you state what insurance men generally understand the term underwritng policy to be?

Mr. Lasky: Same objection.

[fol. 183] Hearing officer: Same ruling, overruled.

Witness:

A. Well, I think to my knowledge the average person on the street, the underwriter, person engaged in the insurance business, might say that underwriting policy would be the guiding principles laid down or set down in the selection of risks, either by classification or by individual risks, that fall within any given classification.

Mr. Fullenwider:

Q. You have used the term "by classification." Do you mean classification as relates to the hazard that pertains to the particular risk?

A. Well, I meant primarily by insurance classification for rating purposes. Ordinarily the hazard is the most important element in judging the underwriting of a particular classification or a particular risk.

Q. Is membership in a certain club deemed by insurance men generally to be an underwriting policy?

Mr. Lasky: Object to that in the first place as being immaterial what other people think. The question is what is the underwriting of a particular insurer.

Hearing officer: Sustained.

Mr. Fullenwider: No further questions.

Hearing officer: Cross-examination?

Mr. Lasky: No cross-examination.

Hearing officer: You may be excused, Mr. Lloyd. Thank you.

Mr. Fullenwider: Call Mr. Wilkins.

[fol. 184] Hearing officer: Mr. Wilkins. Thank you.

Mr. Richard P. Wilkins, called as a witness, being first duly sworn, testified as follows:

Hearing officer: Your full name, please.
Witness: Richard P. Wilkins.

Direct examination

Mr. Fullenwider:

Q. Your address, Mr. Wilkins?
A. Business address?
Q. Yes.
A. 401 California Street.
Q. By whom are you employed?
A. Fireman's Fund Insurance Company.
Q. How long have you been with that Company?
A. Since 1921.
Q. What is your present capacity with the Company?
A. Manager of the Automobile Department.
Q. Approximately how long have you been in that capacity?
A. Approximately four years.
Q. Approximately how long have you been connected—strike that. Have you been connected with the underwriting of automobile liability and property damage risk?
A. Since 1921.
Q. Do you know what is understood by insurance men—strike that. Do you understand what insurance men generally—strike that, I will finally get it right. Do you know [fol. 185] what insurance men generally understand the term underwriting policy to mean?
A. I think I do.
Q. Will you tell us what that term means?

Mr. Harrison: Same objection as stated with respect to the previous witness.

Hearing Officer: Same ruling, overruled.

Mr. Lasky: May I point out the first question was, what the insurance men believe the term to mean, the next question was, what does the term mean.

Hearing Officer: Maybe I assumed that it included the previous question. You were asked if you knew what the term generally meant among insurance men. Will you tell us within that understanding what the term underwriting policy means?

Witness:

A. Well, underwriting policy to me would mean the classification of risk, for example, whether or not a company writes long-haul trucking risks, or whether they write taxicab risks, things that would have to do ultimately with the loss ratio of a classification of business or the whole of the business.

Mr. Fullenwider: No further questions.
Hearing Officer: Any questions, Mr. Lasky?
Mr. Lasky: Yes, just a moment.

Cross-examination.

Mr. Harrison:

Q. Mr. Wilkins, the Fireman's Fund has been a com- [fols. 186-200] petitor of the California Automobile Association Inter-Insurance Bureau, has it not?

A. I would say definitely yes.

Q. And were you active in advocating the sort of legislation which was enacted providing for the assignment of risks?

A. Yes.

Mr. Fullenwider: I am going to object on the grounds it is incompetent, irrelevant and immaterial. Legislation is enacted by the legislature.

Mr. Harrison: We are entitled to show we submitted——

Hearing Officer: Objection overruled. Proper cross-examination.

Witness: Yes.

Mr. Harrison:

Q. As a matter of fact, the Inter-Insurance Bureau of the California Automobile Association withdrew from the former Voluntary Plan shortly before this legislation was introduced in the legislature, did it not?

A. That is my recollection.

Q. And it was following that withdrawal that the legislation was introduced?

A. That is correct.

Mr. Harrison: That is all.
Mr. Fullenwider: No further questions.

[fols. 201-202] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 203] EXHIBIT 1A

STATE OF CALIFORNIA, DEPARTMENT OF INSURANCE

File No. S. F. 5337 A

ACCUSATION

In the Matter of the Certificate of Authority to Transact Liability Insurance of CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTERINSURANCE BUREAU, Respondent

The Insurance Commissioner of the State of California is informed and alleges:

I

That Respondent, California State Automobile Association Interinsurance Bureau, is admitted to transact Liability Insurance and is the holder of a certificate of authority issued by the Insurance Commissioner of the State of California to transact the said class of insurance in this State for the year July 1, 1947-July 1, 1948.

II

That said Insurance Commissioner, pursuant to the provisions of Article 4, Chapter 1, Part 3, Division 2 of the Insurance Code, on the 8th day of December, 1947, approved and issued a reasonable Plan for the equitable apportionment among insurers admitted to transact Liability Insurance, of those applicants for automobile, bodily injury [fol. 204] and property damage insurance who are in good faith entitled to, but are unable to procure such insurance through ordinary methods.

III

That said Insurance Commissioner, on or about December 16, 1947, mailed to the Respondent herein a copy of the said Plan; that the said Plan directed the Respondent to subscribe thereto on or before the effective date of the said Plan; that the effective date of the said Plan was January

19, 1948; that the said Plan contained a form of subscription agreement to be signed by said Respondent.

IV

That the Respondent herein has wholly failed to subscribe to the said Plan on or before January 19, 1948, or at all.

V

That said Insurance Commissioner, on January 20, 1948, mailed a notice to the Respondent herein at its address, 150 Van Ness Avenue, San Francisco 2, California, to subscribe to the said Plan, and the said notice was received by the Respondent herein on January 21, 1948; the said notice required subscription to said Plan on or before February 1, 1948.

VI

That the Respondent wholly failed to comply with the notice set forth in Paragraph V hereof on or before Feb- [fol. 205] ruary 1, 1948, or at all.

VII

That the matters alleged in Paragraphs I-VI hereof show that the Respondent has failed to comply with Article 4, Chapter 1, Part 3, Division 2 of the Insurance Code, and by reason of the provisions of Section 11625 thereof the Insurance Commissioner may suspend the certificate of authority of the Respondent to transact Liability Insurance in this State for the period specified in the said Section 11625.

Dated: February 4, 1948.

Wallace K. Downey, Insurance Commissioner, by Frank Fullenwider, Deputy.

[fol. 206] EXHIBIT 1B

File No. S. F. 5337 A

STATE OF CALIFORNIA, DEPARTMENT OF INSURANCE

STATEMENT TO RESPONDENT

In the Matter of the Certificate of Authority to Transact Liability Insurance of CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTERINSURANCE BUREAU, Respondent

To California State Automobile Association Interinsurance Bureau:

There is attached hereto a copy of an Accusation which is on file with the office of the Department of Insurance, State of California, 417 Montgomery Street, San Francisco 4, California, in the above-entitled and numbered matter, which is hereby served upon you. Affirmative proof of the matter alleged in the said Accusation may subject your certificate of authority to transact Liability Insurance in this State to a suspension.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the Department of Insurance within fifteen (15) days after the said Accusation was personally served on you or mailed to you, you will be deemed to have waived your right to a hearing in the matter and the Department of Insurance may proceed upon the Accusation without a hearing and take action thereon as provided by law.

The request for a hearing may be made by delivering or mailing the enclosed form entitled "Notice of Defense," or by delivering or mailing a notice of defense within fifteen (15) days as provided by Section 11506 of the Government [fol. 207] Code to the Department of Insurance, 417 Montgomery Street, San Francisco 4, California.

The enclosed "Notice of Defense," if signed and filed with said Department of Insurance shall be deemed a specific denial of all parts of said Accusation but you will not be permitted to raise any objection to the form of the Accusation unless you file another separate notice of defense thereon as provided by section 11506 (a) (3) of said Code within the said fifteen (15) days.

You are further notified that if you file any notice of defense within the time permitted, a hearing will be held at a time and place to be later specified.

Dated: February 4, 1948.

Wallace K. Downey, Insurance Commissioner, by Frank Fullenwider, Deputy.

[fol. 208] EXHIBIT IC

BEFORE THE DEPARTMENT OF INSURANCE, STATE OF CALIFORNIA

No. S. F. 5337-A

NOTICE OF DEFENSE

In the Matter of the Certificate of Authority to transact Liability Insurance of CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTERINSURANCE BUREAU, Respondent

To: Department of Insurance, State of California, 417 Montgomery Street, San Francisco 4, California.

I, the undersigned and the Respondent named in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation and of the Statement to Respondent.

I hereby request a hearing in said proceeding to permit me to present my defense to the charges contained in said Accusation.

Dated: February 10, 1948.

California State Automobile Association Interinsurance Bureau, by Geo. Chalmers, Manager—Attorney in Fact.

[fols. 209-226] EXHIBIT 1D

STATE OF CALIFORNIA, DEPARTMENT OF INSURANCE, SAN FRANCISCO

No. S. F. 5337 A

NOTICE OF HEARING

In the Matter of the Certificate of Authority to Transact Liability Insurance of CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTERINSURANCE BUREAU, Respondent

You are hereby notified that a hearing will be held before the Department of Insurance, State of California, 417 Montgomery Street, 2nd Floor, San Francisco, California, on the 5th day of March, 1948, at the hour of 10:00 o'clock A. M., upon the charges made in the Accusation served upon you. You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas and subpoenas duces tecum in accordance with Government Code Section 11510 by applying to the Department of Insurance, State of California, 417 Montgomery Street, San Francisco 4, California.

Dated: February 24, 1948.

Wallace K. Downey, Insurance Commissioner, by Frank Fullenwider, Deputy.

[fol. 227] EXHIBIT "A"

STATE OF CALIFORNIA, DEPARTMENT OF INSURANCE

CERTIFICATION

I, Wallace K. Downey, Insurance Commissioner, do hereby certify that the attached photostat is a photostatic copy of the face of the Power of Attorney and Application for Automobile Insurance filed with the Insurance Commissioner on the 29th day of June, 1914.

Wallace K. Downey, Insurance Commissioner, by Frank Fullenwider, Deputy.

(Here follows 1 Photolithograph, side folio 228)

112A

Resp. Exh. A

POWER OF ATTORNEY AND APPLICATION FOR AUTOMOBILE INSURANCE

TO THE

CALIFORNIA STATE AUTOMOBILE ASSOCIATION
INTER-INSURANCE BUREAU

AGAINST THE HAZARDS INDICATED (X) BELOW

(Place X before each kind of insurance desired.)

	HAZARDS to be written by Bureau	AMOUNT	PREMIUM DEPOSIT		HAZARDS to be handled by Bureau	PREMIUM
	Fire and Transportation		$		$5000 10000	
	Theft	$			Personal Liability	$
	Collision ($25 deductible)					
	Collision (full coverage)				Workmen's Compensation	
	Property Damage	$				
	Totals	$			Totals	$

WHEREAS, at San Francisco, California, an office has been opened under the name of CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER-INSURANCE BUREAU, herein called the Bureau, where certain persons, firms and corporations may exchange indemnity against the loss of damage from certain hazards arising from fire, theft, or collision and incident to ownership, maintenance and operation of automobiles used by them.

AND WHEREAS, F. J. Walker, Nathan [illegible] and E. B. de Golia, constituting the executive committee of the Insurance Board constituted according to the rules hereinafter referred to hold Power of Attorney for each of the subscribers to said Bureau, with full power of substitution and revocation.

AND WHEREAS, ... herein known as the subscriber, desires to become a member of said Inter-Insurance Bureau and hereby applies for insurance against the hazards herein indicated to the extent limited and defined in the policy of insurance which shall be issued by said Bureau for the term of one year

commencing .... 191 ..... at noon and expiring .... 191 .....

upon the automobile, including its body, machinery and equipment, described herein, which description is hereby declared to be true and [illegible] a warranty by the subscriber.

NOW, THEREFORE, the subscriber does hereby make, execute, and appoint the said F. J. Walker, Nathan [illegible] and E. B. de Golia [illegible] lawful Attorney in Fact, with full power of substitution and revocation, and with power in the subscriber's name, place [illegible] for the purposes of exchanging with other subscribers to such Bureau indemnity to the extent described in contracts of indemnity [illegible] subscribers against loss or damage incident to the ownership, maintenance and operation of automobiles. Such Power of Attorney also [illegible] with the powers provided, conferred, granted and confirmed and subject to all the limitations, modifications [illegible] contained in the rules and regulations of the Insurance Board of the California State Automobile Association Inter-Insurance Bureau, which said [illegible] agrees shall consist of an equal number of persons with the Board of Directors of the California State Automobile Association to be [illegible] Directors and the said rules and regulations are hereby assented to and approved by this subscriber; the said rules and regulations to be [illegible] for inspection by the subscriber at the office of the Bureau.

DESCRIPTION OF AUTOMOBILE

TRADE NAME	[illegible]	TYPE OF BODY	MOTOR POWER	NO. OF CYLINDERS	[illegible]	MODEL YEAR	[illegible]
	A.						
	B.						

The Automobile above described is usually kept, when not in use, in Building situate No. ....

.... (Street and Town)

Occupied as a .... [illegible]

Was this Automobile new or second-hand when purchased by Applicant? ....

If second-hand, state name and address of party from whom purchased? ....

.... Date when purchased .... , 191 .....

The cost to Applicant of this Automobile, including its equipment was $ ....

Is automobile fully paid for? .... If not, state amount unpaid $ ....

Is Automobile mortgaged or in any way encumbered? .... (Give full particulars)

For what purposes will this Automobile be used? .... (Give full particulars)

Is Automobile to be used to carry passengers for compensation? .... (State to what extent if any)

Occupation of Applicant ....

[illegible] Address .... Business Address ....

IN WITNESS WHEREOF, the subscriber has hereunto set his hand and seal this .... day of ....

191 ..... at ....

Witness ....

.... (Seal)

Subscriber

[fol. 229] RESPONDENT'S EXHIBIT "B"

CERTIFICATION

I, Wallace K. Downey, Insurance Commissioner, do hereby certify that the attached copy of Proposed Rules and Regulations of the Insurance Board of the California State Automobile Association Inter-Insurance Bureau is a true and correct copy of the said document filed with the Insurance Commissioner on the 29th day of June, 1914.

Wallace K. Downey, Insurance Commissioner, by Frank Fullenwider, Deputy.

[fol. 230] Copy.

PROPOSED RULES AND REGULATIONS FOR THE INSURANCE BOARD OF THE CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER-INSURANCE BUREAU

(1) Risks shall be restricted to automobiles of the private pleasure car type. Only members in good standing of the California State Automobile Association, or corporations or firms in which such members are officers or partners may be eligible to apply for insurance in the Bureau. Such insurance shall be limited to not to exceed two cars per member in the case of privately owned cars, and to not to exceed two cars per membership in the case of cars owned by Corporations or firms, except by special authority of the Executive Committee of the Board.

(2) The business of the fund shall be subject to the control of the Insurance Board, said Board to be at all times composed of an equal number of persons with the Board of Directors of the California State Automobile Association, and to be elected by said Board of Directors. They shall hold office for one year and until the election and qualification of their successors, and vacancies shall be filled by the Directors for the unexpired term.

The Insurance Board shall appoint an Executive Committee of three members. Such Committee shall hold at all times the Power of Attorney provided for in Section 2 of an Act entitled: "An act defining certain classes of contracts for the exchange of indemnities, prescribing regulations therefor, and fixing license fee." approved May 1, 1911. Such Power of Attorney so held shall contain full power of substitution and revocation.

The Power of Attorney and application for insurance shall be in the form hereto annexed and the conditions con- [fol. 231] tained therein shall be the rules and regulations of the said Board.

(3) Policies issued by the Bureau shall be limited to the standard forms and standard endorsements thereof, covering against fire, theft, collision damages ($25.00 deductible). Collision damage (Full coverage) and property damages; provided however, that each such application shall contain provision to the effect that the powers and duties of the attorney-in-fact for the Subscribers to the Bureau shall be subject to the prescription, regulation and control of the Insurance Board of the California State Automobile Association.

(4) A ledger account shall be kept with each Bureau member and said account shall be debited each month with its pro rata amount of loss and expense sustained by the Bureau during that month, in the discretion of the board. This pro rata shall be determined in percentages of the individual credit balance as proportioned to the total premium deposits on hand.

(5) The amount of the individual liability assumed by any member on any single risk is hereby limited to an amount equal to such proportion of such risk as the individual credit balance of premium deposit of such member, bears to the total amount of premium deposits on hand.

(6) The rate of premium deposit payable in advance which shall be collected on each policy of insurance is hereby fixed at 70 per cent of the established board rates for the same line of protection and for the various classes, subdivisions or special and individual risks within each such line.

(7) Amounts of insurance shall be limited as determined in the classification sheets and insurance manuals governing the Pacific Coast Automobile Underwriters Association.

(8) The Anglo California Trust Company of San Francisco is hereby designated as the depositary for the Bureau [fol. 232] and the moneys of the Fund shall be deposited therewith on an interest bearing account, subject to check signed by the Attorney-in-fact, and countersigned by one member of the Executive Committee. Said interest as it accrues and is credited to the account of the Fund shall be credited pro rata to the several accounts of the members.

(9) The books and the accounts of the Bureau shall be audited by a certified public accountant employed from time to time at the discretion of the Insurance Board, and shall at all times be open to the inspection of any member of the Board.

(10) Until the further order of the Board, the business of the Bureau, subject to these rules and regulations, and any alterations or modifications thereof, or additions thereto, shall be conducted by a manager under direct employment by the Board, which manager shall be a special agent of this Board for the purpose of carrying out the instructions of the Board, and said Manager shall not be deemed to have any general powers in conducting the business of said Bureau excepting such implied powers as it may be necessary for him to exercise for the purpose of carrying into effect the special instructions of this Board. The executive Committee or Manager may be the attorney-in-fact of the Subscribers of the Bureau, and until the further order of this Board his or their power of attorney shall be in the form heretofore approved by this Board and hereunto annexed.

As full compensation for his services as manager he shall receive the amount of ten (10) per cent of the sums of premium deposit collected on each policy of insurance until the amount so received shall equal the sum of $500.00 per month, and thereafter and during said time he shall receive a salary of $500.00 per month.

[fol. 233] (11) The Manager shall execute and deliver to all subscribers to the Bureau, contracts of indemnity among them as herein provided and shall with the authority of the executive committee of the Insurance Board, and in proper cases, and from time to time reinsure the same. He shall have power to adjust and settle all losses that may occur under such contracts, to give, receive, or waive any notices or proofs of loss, to collect from the subscriber all sums of money required to be paid because of such exchange of indemnity, to appear for the Subscriber in any suits, actions, or legal proceedings, and with the authority of the Executive Committee to institute, prosecute and defend, compromise, or settle any suit, action or legal proceeding that may arise out of any such contract; and with the authority of said Executive Committee to do or perform any other or different act that said Subscriber could do in relation to any such contract of exchange of indemnity.

[fol. 234] Unless otherwise endorsed therein all Powers of Attorney shall be for no other or different purpose than that specified in these rules and regulations and shall be subject to the following limitations and conditions, to wit:

(a) The attorney shall not bind the subscribers jointly with other subscribers who may exchange such indemnity, nor shall they create any joint capital or stock, but shall and are hereby given power only to bind the subscriber severally and for himself alone, and the subscriber's liability shall in no event be joint, or joint and several.

(b) The attorney shall have power to require such subscriber to deposit annually in advance upon delivery of the policy, a certain sum called a premium deposit, proportioned in amount to the amount of indemnity agreed to be given such Subscriber, which deposit shall be appropriated for the payment of any liability and for the expenses and disbursements herein provided for. Failure to make such deposit for fifteen days after the time above specified shall automatically suspend such policy without notice.

(c) The Subscriber's aggregate or total liability for losses under his contract shall in no event exceed the amount standing on the books of the exchange to the credit of such subscriber.

(d) The attorney, or the substituted attorney, with the authority of the Executive Committee, shall have power to institute such legal proceeding or action either in his or their own name or in the name of the Inter Insurance Bureau as may be necessary to enforce the provisions of the Power of Attorney and of the policy.

(12) The Executive Committee for the purpose of facilitating the management and prosecution of the inter-insurance herein provided for and protecting the interest of [fol. 235] the subscribers in this Bureau shall be constituted as follows: Such committee shall be at all times composed of the persons selected by the Insurance Board of the California State Automobile Association selected as herein provided. The action of a majority of the committee shall be deemed to be the action of the Committee. They shall have power to enter into a contract of employment with the Attorney-in-fact, or any substitute, and fix his or their compensation or the commission he or they shall receive for the services rendered. The Executive Committee shall prescribe and fix the amount of premium required for insurance and may limit and define the hazards that may be

assumed by the Bureau and the amount of insurance that may be written. All funds of the Bureau shall be under the exclusive control of the Executive Committee and may be invested by said Committee in any of the securities in which the funds of insurance companies are permitted to be invested.

(13) A surplus fund shall be created, equal in aggregate to the amount to be determined by the Insurance Board, not exceeding 5% of the aggregate of the risks written in the preceding year, and shall consist of not to exceed 50% of that portion of the premium deposited on each policy, not required to meet the debts, operating expenses, claims and losses of the Bureau.

(14) The amount of the deposit at any time standing to the subscriber's credit shall be applicable at all times to the discharge of the subscriber's liability for losses and expenses. A separate account of all moneys paid by and due the subscriber shall be kept by said attorney-in-fact and shall be open to the subscriber's inspection.

The Executive Committee shall cause all accounts to be audited as often as it deems necessary and at least once a year.

[fol. 236] The policy issued herein may be cancelled at any time by the Subscriber, or by the Executive Committee by giving ten days' notice in writing to the subscriber personally or by delivering or mailing such notice to his last known address. When cancelled by order of the Executive Committee, the Subscriber shall be entitled to the return of the unearned portion of his premium deposit.

Each subscriber shall be charged with his proportion of the debts, expenses and losses of the Bureau. Upon termination of the policy there shall be returned to the Subscriber that portion of his annual premium deposit which has not been used to pay the debts, expenses and losses of the preceding year, less the amount required for the creation of the surplus fund as defined in paragraph 13, and then standing to his credit.

(15) The Bureau may sue or be sued in its own name. Should it become necessary for any reason to sue the Subscribers of said Bureau, the Subscriber to avoid a multiplicity of suits shall not bring or maintain any suits or other proceedings at law, or in equity, for the recovery of any claim upon, under or by virtue of such contract of indemnity against more than one of the subscribers at any

time, nor shall any suit or proceeding be maintained by him in any court other than the highest court of original jurisdiction. In the event that the final decision in any such suit [fol. 237] or other proceeding shall be adverse to him, such subscriber will bring no suit or other proceeding against any other subscriber. A final decision in any suit or other proceeding by any other Subscriber against any of the other subscribers, shall be taken to be decisive of similar claims, so far as the same subsists, against the Subscriber thereto, absolutely fixing his liability in the premises; and he shall accept and abide by such final decision in the same manner and to the same effect, as if he had been sole defendant in a similar suit or proceeding as to the similar claim against him, so far as the same may subsist, save and except, however, as to the matter of costs and disbursements.

[fol. 238] EXHIBIT "C"

STATE OF CALIFORNIA, DEPARTMENT OF INSURANCE

CERTIFICATION

I, Wallace K. Downey, Insurance Commissioner, do hereby certify that the attached photostat is a photostatic copy of the face of the Power of Attorney and Application for Automobile Insurance filed with the Insurance Commissioner on the 27th day of July, 1925.

Wallace K. Downey, Insurance Commissioner, by Frank Fullenwider, Deputy.

(Here follows 1 photolithograph, side folio 239)

Resp C A C ×

CALIFORNIA STATE [illegible]MOBILE ASSOCIATION INTER-INSURANCE BUREAU

POWER OF ATT[illegible] AND APPLICATION FOR AUTOMOBILE INSURANCE

X	HAZARDS to be written by [illegible]	PREMIUM DEPOSIT	X	HAZARDS to be bothered by Bureau	PREMIUM	Factory List
	Fire and Transportation } $			Public Liability		Fire Rate
	Theft					Theft Rate
	Conversion			Chauffeur's Compensation		PD & PL SYMBOLS
	Confiscation			Total		
	Collision—Vendor's Single Interest			(Leave this space blank)		
	Collision—$[illegible] deductible from each claim					
	Collision—$[illegible] deductible from each claim					
X	Collision—full coverage (no deduction)					
	Property Damage, $[illegible] per Accident					
	Total					

[illegible] has been created under the name of CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER-INSURANCE BUREAU [illegible]

AND WHEREAS, [illegible]

[illegible] for the term of one year.

NOW, THEREFORE, [illegible]

DESCRIPTION AND FACTS WITH RESPECT TO THE PURCHASE OF THE AUTOMOBILE:

YEAR	MODEL	TRADE NAME	TYPE OF BODY (IF TRUCK STATE TONNAGE)	No. CYL.	NUMBERS (GIVE BOTH)

PURCHASED BY THE APPLICANT			ACTUAL COST TO ASSURED	UNPAID BALANCE	[illegible]
MONTH	YEAR	NEW OR SECOND-HAND			

IF PURCHASED UNDER CONTRACT LOSS SHALL BE PAYABLE TO:

PURCHASED FROM:

Is automobile equipped with
- Front Bumper — Name (Yes or No)
- Rear
- Bumper Tips—NO ALLOWANCE FOR THIS EQUIPMENT
- Locking Device — Name (Yes or No)

The Automobile will be used exclusively for ______ and is not used in the rent service or in carrying passengers for compensation

Car will generally be garaged and operated in

Has any company cancelled or refused to issue automobile insurance to you? ______ If so give name of company, date cancelled, and reason for refusal or cancellation

Occupation of Applicant (Give kind of business and full name of employer)

Business Address: ______ Residence Address:

IN WITNESS WHEREOF, The subscriber has hereunto set his hand and seal this ______ day of ______ 192 , at

Witness: ______ (SIGN HERE) ______ (Seal) Subscriber

[fol. 240] RESPONDENT'S EXHIBIT "D"

STATE OF CALIFORNIA, DEPARTMENT OF INSURANCE

CERTIFICATION

I, Wallace K. Downey, Insurance Commissioner, do hereby certify that the attached copy of Rules and Regulations of the Insurance Board of the California State Automobile Association Inter-Insurance Bureau, as amended March 1, 1925, is a true and correct copy of the said document filed with the Insurance Commissioner on the 27th day of July, 1925.

Wallace K. Downey, Insurance Commissioner, by Frank Fullenwider, Deputy.

[fol. 241] Copy

REVISED RULES AND REGULATIONS OF THE INSURANCE BOARD OF THE CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER INSURANCE BUREAU

Adopted March 1, 1925

(1) The purpose and business of the California State Automobile Association Inter-Insurance Bureau, hereinafter called the Bureau, shall be the conducting of an inter-insurance exchange in accordance with the provisions of the act known as the Reciprocal or Interinsurance Act of the State of California, approved June 3, 1921.

(2) The business of the Bureau shall be subject to the control of the Insurance Board, said Board to be at all times composed of an equal number of persons with the Board of Directors of the California State Automobile Association, and to be elected by said Board of Directors. They shall hold office for one year and until the election and qualification of their successors, and vacancies shall be filled by the Directors for the unexpired term.

(3) The Insurance Board shall appoint an Executive Committee of five members. Such Committee shall hold at all times the Power of Attorney of the subscribers of the Bureau provided for in the aforesaid Act. Such Power of Attorney so held shall be in the following form, to wit:

"Whereas, at San Francisco, California, an office has been opened under the name of California State Automobile As-

sociation Inter Insurance Bureau, herein called the Bureau, where certain persons, firms and corporations may exchange indemnity against loss or damage from certain hazards arising from fire, theft or collision, or incident to the sale, purchase, leasing, ownership, maintenance and operation of automobile used by them;

"And whereas, (names of the Executive Committee), constituting the Executive Committee of the Insurance Board, constituted according to the rules hereinafter re- [fol. 242] ferred to, hold Power of Attorney for each of the subscribers to said Bureau with full power of substitution and revocation;

"And Whereas (Name of Subscriber), herein known as the subscriber, desires to become a member of said Inter-Insurance Bureau and hereby applies for insurance against the hazards herein indicated, to the extent limited and defined in the policy of insurance which shall be issued by said Bureau, for the term of one year, commencing ——, 19——, at noon and expiring ——19——, at noon, upon the automobile, including its body, machinery and equipment, described herein, which description is hereby declared to be true and correct and made a warranty by the subscriber.

"Now therefore, the subscriber does hereby make, execute and appoint the said (Names of the Executive Committee), the subscriber's true and lawful attorney in Fact, with full power of substitution and revocation, and with power in the subscriber's name, place and stead to represent him for the purposes of exchanging with other subscribers to such Bureau indemnity to the extent described in contracts of indemnity executed and delivered to said subscribers against loss or damage incident to the sale, purchase, leasing, ownership, maintenance and operation of automobiles. Such Power of Attorney shall be in all respects co-extensive with the powers provided, enumerated, granted and confirmed, and subject to all the limitations, modifications and restrictions contained in the rules and regulations of the Insurance Board of the California State Automobile Association Inter-Insurance Bureau, and the said rules and regulations are hereby assented to and approved by this subscriber. The said rules and regulations to be at all times accessible for inspection by the subscriber at the office of the Bureau."

[fol. 243] (4) Until the further order of the Board, the business of the Bureau, subject to these rules and regulations, and any alterations or modifications thereof, or additions thereto, shall be conducted by a manager under direct employment by the Board, which manager shall be a special agent of this Board for the purpose of carrying out the instructions of the Board, and said manager shall not be deemed to have any general powers in conducting the business of said Bureau excepting such implied powers as it may be necessary for him to exercise for the purpose of carrying into effect the special instructions of this Board. The Manager, by action of the Executive Committee, may be the Attorney-in-fact of the subscribers of the Bureau, and his power of attorney shall be appended to the power of attorney of the Executive Committee, and shall be in the following form, to wit:

"The undersigned (Members of the Executive Committee) holding Power of Attorney under the foregoing instrument do, by virtue of the power therein contained, hereby appoint (Name of Manager) of San Francisco, California, to be the Attorney of our Principal, for him or in his name, to execute and perform all and every the matters and things mentioned and contained in said Power of Attorney to us, in the same manner, and as fully and effectually as he our said Principal or as we might or could have done, if personally present; hereby ratifying and confirming and agreeing to confirm whatever the said Attorney shall do or cause to be done in and about the premises by virtue of these presents."

(5) The Manager shall execute and deliver to all subscribers to the Bureau, contracts of indemnity among them as herein provided and shall, with the authority of the Executive Committee of the Insurance Board, and in proper cases, and from time to time, reinsure the same. He shall have the power to adjust and settle all losses that may [fol. 244] occur under such contracts, to give, receive or waive any notices or proofs of loss, to collect from the subscriber all sums of money required to be paid because of such exchange of indemnity, to appear for the Subscriber in any suits, actions or legal proceedings, and with the authority of the Executive Committee to institute, prosecute and defend, compromise, or settle any suit, action or legal

proceeding that may arise out of any such contract, and with the authority of said Executive Committee to do or perform any other or different act that said Subscriber could do in relation to any such contract of exchange of indemnity.

(6) Unless otherwise endorsed therein, all Powers of Attorney shall be for no other or different purpose than that specified in these rules and regulations, and shall be subject to the following limitations and conditions, to wit:

(a) The attorney shall not bind the Subscriber jointly with other Subscribers who may exchange such indemnity, nor shall they create any joint or capital stock, but shall and are hereby given power only to bind the Subscriber severally and for himself alone, and the Subscriber's liability shall in no way be joint, or joint and several.

(b) The attorney shall have power to require such Subscriber to deposit annually in advance upon delivery of the policy, a certain sum called a premium deposit, proportioned in amount to the amount of indemnity agreed to be given such Subscriber, which deposit shall be placed to the credit of such Subscriber. The amount of the deposit at any time standing to the Subscriber's credit shall be applicable at all times to the discharge of the Subscriber's liability for losses and expenses.

(c) The accounts of the Bureau shall be so kept as to reveal the individual account of each Subscriber and said account shall be open to the Subscriber's inspection. Said [fol. 245] account shall be debited each month with its pro-rata amount of loss and expense sustained by the Bureau during that month, in the discretion of the Board. This pro rata shall be determined in percentages of such Subscriber's individual annual premium deposit in force as proportioned to the total annual premium deposit in force.

(d) The amount of the individual liability assumed by any subscriber on any single risk is hereby limited to an amount equal to such proportion of such risk as the individual annual premium deposit in force of such subscriber bears to the total annual premium deposits in force.

(e) The Subscribers's aggregate or total liability for losses and expenses under his contract shall in no event exceed the amount standing on the books of the Bureau to the credit of such Subscriber.

(f) A reserve Fund shall be maintained equal in aggregate to the amount to be determined by the Insurance Board. Said Reserve Fund shall be created by charging to the account of each subscriber, each month, a percentage of his annual premium deposit in force; the amount of such percentage to be determined by the Executive Committee, and to be uniform, in any given month, in respect of the several subscribers. The Reserve Fund so created, and including any amounts credited thereto from any other sources, shall not be expended or appropriated, in whole or in part, for any purpose other than the purposes herein specified, to wit: Said Reserve Fund shall be applicable at all times to the payment of losses and/or expenses, in the discretion of the Executive Committee. In event of the Bureau discontinuing business, such part of the Reserve Fund as shall not be required for the payment of losses and/or expenses, shall be distributed among the subscribers; each subscriber receiving such proportion thereof as his individual annual [fol. 246] premium deposit in force bears to the total annual premium deposits in force.

(g) Upon termination of the policy of any subscriber there shall be returned to such subscriber in final settlement of his account, that portion of his annual premium deposit, if any, which has not been used to pay debts, expenses and losses, or for the creation of the reserve fund as hereinbefore provided, and then standing to his credit.

(h) The attorney, or the substituted attorney, with the authority of the Executive Committee, shall have the power to institute such legal proceeding or action either in his or their own name or in the name of the Inter-Insurance Bureau as may be necessary to enforce the provisions of the Power of Attorney and of the policy.

(i) The Bureau may sue or be sued in its own name. Should it become necessary for any reason to sue the Subscribers of said Bureau, the Subscriber to avoid a multiplicity of suits shall not bring or maintain any suits or other proceedings at law, or in equity, for the recovery of any claim upon, under or by virtue of such contract of indemnity against more than one of the Subscribers at any time, nor shall any suit or proceeding be maintained by him in any court other than the highest court of original jurisdiction. In the event that the final decision in any such suit or other proceeding shall be adverse to him, such Subscriber will bring no suit or other proceeding against

any other Subscriber. A final decision in any suit or other proceeding by any Subscriber against any of the other Subscribers shall be taken to be decisive of similar claims, so far as the same subsist, against such Subscriber, absolutely fixing his liability in the premises, and he shall accept and abide by such final decision in the same manner and to the same effect, as if he had been sole defendant in a similar suit or proceeding as to the similar claim [fol. 247] against him, so far as the same may subsist, save and except, however, as to the matter of costs and disbursements.

(7) Risks assumed by the Bureau shall be restricted to automobiles of the private pleasure car and commercial car types. Only members in good standing of the California State Automobile Association or corporations or firms in which such members are officers or partners shall be eligible to apply for insurance in the Bureau.

(8) Policies issued by the Bureau shall be limited to the standard forms and standard endorsements thereof, covering the risks incident to the sale, purchase, leasing, ownership, maintenance and operation of automobiles.

(9) The Executive Committee shall prescribe and fix the rates of premium deposit required for insurance and may limit and define the hazards that may be assumed by the Bureau and the amount of insurance that may be written.

(10) All funds of the Bureau shall be under the exclusive control of the Executive Committee and may be invested by said Committee in any of the securities in which the funds of insurance companies are permitted to be invested, under the laws of the State of California.

(11) The depositories of the Bureau shall be such savings and commercial banks of the State of California as may be designated by the Executive Committee; and the uninvested funds of the Bureau shall be deposited therewith in interest bearing accounts, subject to check signed by the Attorney-in-fact, and countersigned by one member of the Executive Committee.

(12) All amounts consisting of interest on investments and or bank deposits received by the Bureau shall inure to the benefit of each subscriber, monthly, in such proportion as his individual annual premium deposit in force [fol. 248] bears to the total annual premium deposits in force.

(13) The books and accounts of the Bureau shall be audited by a certified public accountant employed from time to time at the discretion of the Executive Committee, and at least once each calendar year, and shall be at all times open to the inspection of any member of the Board.

(14) The Executive Committee shall have power to enter into a contract of employment with the Manager, or any substitute, and to fix his compensation, provided that such compensation for any given period shall not exceed two (2) per centum of the total net premium deposits received during such period.

(15) The action of a majority of the Executive Committee at any regularly called meeting shall be deemed to be the action of the Committee.

(16) These rules and regulations may be amended by the affirmative vote of two-thirds of the members of the Insurance Board at any regularly called meeting.

[fol. 249] EXHIBIT "E"

STATE OF CALIFORNIA, DEPARTMENT OF INSURANCE

CERTIFICATION

I, Wallace K. Downey, Insurance Commissioner, do hereby certify that the attached photostat is a photostatic copy of the face of the Power of Attorney and Application for Automobile Insurance filed with the Insurance Commissioner on the 2nd day of September, 1941.

Wallace K. Downey, Insurance Commissioner, by Frank Fullenwider, Deputy.

CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER INSURANCE BUREAU

126A

APPLICATION FOR AUTOMOBILE INSURANCE AND POWER OF ATTORNEY

WHEREAS, at San Francisco, California, an office is conducted under the name of CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER INSURANCE BUREAU, where certain persons, firms and corporations may exchange indemnity, including liability and disability insurance, against loss or damage incident to the sale, purchase, leasing, ownership, maintenance, operation and use of automobiles.

NOW, THEREFORE, the herein undernamed insured, known as the subscriber, hereby constitutes and appoints H. J. BRUNNIER & J. C. INSOLIA, ARTHUR H. BREED, FRANCIS CARR and DR. GUIDO E. CAGLIERI with full powers of substitution and revocation, the subscriber's attorney, and in his name and place authorizes them or their substitute, to represent the subscriber from the date hereof until this Power of Attorney is revoked for the following purposes, to-wit:

1. To exchange with other subscribers in such Inter Insurance Bureau, indemnity, including liability and disability insurance, to the extent herein or hereafter applied for and described, against loss or damage incident to the sale, purchase, leasing, ownership, maintenance, operation and use of automobiles as herein or hereafter described, and to that end to subscribe and deliver all necessary contracts and to do or perform every other or different act that the subscriber himself could do in relation to any such contract for the exchange of such indemnity.

2. It is expressly understood that this Power of Attorney shall be exercised strictly in conformity with and subject to the rules and regulations of the Insurance Board of said Bureau, and the said rules and regulations are hereby assented to and approved by the subscriber; said Board to be at all times composed of an equal number of persons with the Board of Directors of the CALIFORNIA STATE AUTOMOBILE ASSOCIATION, and said Rules and Regulations and all modifications thereof, to be at all times on file in the office of said Bureau.

DECLARATIONS BY THE APPLICANT

The following are statements of facts known to and declared by the Applicant to be true and policy is to be issued by the Bureau relying on the truth thereof

1. NAME OF APPLICANT Mr ☐ Mrs ☐ Miss ☐ (Print name clearly)

MAILING Address No ..... Street ..... Town ..... State ..... Bus ☐ Res ☐

Secondary Address No ..... Street ..... Town ..... State ..... Bus ☐ Res ☐

THE APPLICANT is (Individual, corporation or partnership)

OCCUPATION of the Applicant is

EMPLOYER ..... (If Applicant is a married woman, show occupation of husband and name of employer.)

GARAGE The automobile will be principally garaged and used in the above city or town unless otherwise specified herein

Comprehensive Collision Code
Symbol
Group
Territory
Bodily Injury Property Damage
Class Rating
B ☐ A ☐ A-1 ☐
Com'l Class
Territory
Territory Number / Salesman's Number

2. POLICY PERIOD From ..... To ..... 12:01 A.M. Standard time at the address of the applicant as stated herein.

3. DESCRIPTION OF THE AUTOMOBILE and facts respecting its purchase

Trade Name	Model	Year	No. Cyl.	Type of Body	Serial	Motor

Purchased by Applicant: Month	Year	New	Used	The automobile is fully paid for and the applicant is the sole and unconditional owner thereof, except as follows	Actual Cost to Applicant	Unpaid Balance	Length of Contract
					$	$	

Purchased From	If Purchased Under Contract Loss Shall Be Payable to	Original Purchase: Date	Cost

4.

COVERAGES and Limits of Liability

BODILY INJURY LIABILITY: Limits of Liability, Each Person	Each Accident	AUTOMOBILE MEDICAL EXPENSE: Limit, Each Person	PROPERTY DAMAGE LIABILITY: Limit, Each Accident	COMPREHENSIVE Including Fire, Theft, Windstorm: Limits, Actual Cash Value	COLLISION OR UPSET: DEDUCTIBLE OPTION, Limits Actual Cash Value, Amount Deductible from Each Claim	Subject to Additional Premium Deposit of	FIRE: Limit	THEFT: Limit	INSURED MEDICAL: Limit
$	$	$500.—	$5000.—	$	$	$	$	$	$500.—

Premium Deposits								Total Premium Deposit
$	$	$	$	$	$	$	$	$

5. USE. The purposes for which the automobile is to be used are (Pleasure and business or commercial)

6. Has any company canceled or refused to issue automobile insurance to you? (If so, give the name of Company, date canceled, policy number and reason for refusal or cancellation)

To whom is policy to be sent? (Give Name and Address)

The applicant hereby appoints the above named payee as agent for the purposes of (a) receiving delivery of said policy, (b) receiving payment of any unearned premium refund due under this policy.

IN WITNESS whereof, I herewith set my hand and seal this ..... day of ..... 19 ..... At ..... A.M. P.M.

District Office .....

Witness ..... (Signature of Applicant) ..... (L.S.)

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[fol. 251] RESPONDENT'S EXHIBIT "F"

STATE OF CALIFORNIA, DEPARTMENT OF INSURANCE

CERTIFICATION

I, Wallace K. Downey, Insurance Commissioner, do hereby certify that the attached copy of the Rules and Regulations of the Insurance Board of the California State Automobile Association Inter-Insurance Bureau, as amended to include liability and disability risks adopted September 18, 1941, is a true and correct copy of the said document filed with the Insurance Commissioner September 2, 1941.

Wallace K. Downey, Insurance Commissioner, by Frank Fullenwider, Deputy.

[fol. 252] Copy

RULES AND REGULATIONS OF THE INSURANCE BOARD OF THE CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER-INSURANCE BUREAU, AS AMENDED TO INCLUDE LIABILITY AND DISABILITY RISKS, ADOPTED SEPTEMBER 18, 1941.

(1) The purpose and business of the California State Automobile Association Inter-Insurance Bureau, hereinafter called the Bureau, shall be the conducting of an inter-insurance exchange in accordance with the provisions of Division One, Part Two, Chapter Three, of the Insurance Code of the State of California relating to Reciprocal Insurers, and hereinafter referred to as the Reciprocal or Inter-Insurance Exchange Act.

(2) The business of the Bureau shall be subject to the control of the Insurance Board, said Board to be at all times composed of an equal number of persons with the Board of Directors of the California State Automobile Association, and to be elected by said Board of Directors. They shall hold office for one year and until the election and qualification of their successors, and vacancies shall be filled by the Directors for the unexpired term.

(3) The Insurance Board shall appoint an Executive Committee of five members. Such Committee shall hold at all times the Power of Attorney of the subscribers of the Bureau, provided for in the aforesaid Act, with full power

of substitution and revocation. Such Power of Attorney so held shall be substantially in the following form, to wit:

"Whereas, at San Francisco, California, an office is conducted under the name of California State Automobile Association Inter-Insurance Bureau, where certain persons, firms and corporations may exchange indemnity, including [fol. 253] liability and disability insurance, against loss or damage incident to the sale, purchase, leasing, ownership, maintenance, operation and use of automobiles.

"Now, therefore, the herein undermentioned insured, known as the subscriber, hereby constitutes and appoints (Names of the Executive Committee) with full powers of substitution and revocation, the subscriber's attorney, and in his name and place authorizes them or their substitute, to represent the subscriber from the date hereof until this Power of Attorney is revoked for the following purposes, to wit:

"1. To exchange with other subscribers in such Inter-Insurance Bureau, indemnity, including liability and disability insurance, to the extent herein or hereafter applied for and described, against loss or damage incident to the sale, purchase, leasing, ownership, maintenance, operation and use of automobiles as herein or hereafter described, and to that end to subscribe and deliver all necessary contracts and to do or perform every other or different act that the subscriber himself could do in relation to any such contract for the exchange of such indemnity.

"2. It is expressly understood that this power of Attorney shall be exercised strictly in conformity with and subject to the rules and regulations of the Insurance Board of said Bureau, and the said rules and regulations are hereby assented to and approved by this subscriber; said Board to be at all times composed of an equal number of persons with the Board of Directors of the California State Automobile Association, and said Rules and Regulations and all modifications thereof, to be at all times on file in the office of said Bureau."

(4) Until the further order of the Board, the business of the Bureau, subject to these rules and regulations, and any alterations or modifications thereof, or additions thereto, shall be conducted by a manager under direct em- [fol. 254] ployment by the Board, which manager shall be

a special agent of this Board for the purpose of carrying out the instructions of the Board, and said manager shall not be deemed to have any general powers in conducting the business of said Bureau excepting such implied powers as it may be necessary for him to exercise for the purpose of carrying into effect the special instructions of this Board. The manager, by action of the Executive Committee, may be the Attorney In Fact of the subscribers of the Bureau, and his power of attorney shall be appended to the power of attorney of the Executive Committee, and shall be in the following form, to wit:

"The undersigned (Members of the Executive Committee) holding Power of Attorney under the foregoing instrument, do, by virtue of the power therein contained, hereby appoint (Name of Manager) of San Francisco, California, to be the Attorney In Fact of our Principal, for him or in his name, to execute and perform all and every the matters and things mentioned and contained in said Power of Attorney to us, in the same manner, and as fully and effectually as he our said Principal or as we might or could have done, if personally present: hereby ratifying and confirming and agreeing to confirm whatever the said Attorney In Fact shall do or cause to be done in and about the premises by virtue of these presents."

(5) The Manager shall execute and deliver to all subscribers to the Bureau, contracts of indemnity among them as herein provided and shall, with the authority of the Executive Committee of the Insurance Board, and in proper cases, and from time to time, reinsure the same. He shall have the power to adjust and settle all losses that may occur under such contracts, to give, receive or waive any notices or proofs of loss, to collect from the Subscriber all sums of money required to be paid because of such exchange of indemnity, to appear for the subscriber, in any suits, actions or legal proceedings, and with the authority of the [fol. 255] Executive Committee to institute, prosecute and defend, compromise, or settle any suit, action or legal proceeding that may arise out of any such contract; and with the authority of said Executive Committee to do or perform any other or different act that said subscriber could do in relation to any such contract of exchange of indemnity.

(6) Unless otherwise endorsed therein, all Powers of Attorney shall be for no other or different purpose than that specified in these rules and regulations, and shall be subject to the following limitations and conditions, to wit:

(a) The attorney shall not bind the Subscriber jointly with other Subscribers who may exchange such indemnity, nor shall they create any joint or capital stock, but shall and are hereby given power only to bind the Subscriber severally and for himself alone, and the Subscriber's liability shall in no way be joint, or joint and several.

(b) The attorney shall have power to require such Subscriber to deposit in advance upon delivery of the policy, a premium deposit for the full term of the policy, proportioned in amount to the amount of indemnity agreed to be given such Subscriber, which deposit shall be placed to the credit of such Subscriber. The amount of the deposit at any time standing to the Subscriber's credit shall be applicable at all times to the discharge of the Subscriber's liability for losses and expenses.

(c) Each subscriber shall be debited each month with his pro rata amount of loss and expense sustained by the Bureau during that month, in the discretion of the Executive Committee. This pro rata shall be that percentage of said amount of loss and expense which the subscriber's individual annual premium deposit in force bears to the total annual premium deposits in force. The accounts of the Bureau shall be so kept as to readily reveal, at any time, the credits and debits applicable to each subscriber, and [fol. 256] said accounts shall be open to the subscriber's inspection.

(d) The amount of the individual liability assumed by any subscriber on any single risk is hereby limited to an amount equal to such proportion of such risk as the individual annual premium deposit in force of such subscriber bears to the total annual premium deposits in force.

(e) The Bureau shall request and secure from the Insurance Commissioner of the State of California a certificate stating that the Bureau has a surplus of Admitted Assets over all liabilities in a sum equal to one and one-half times the minimum paid-in capital required of incorporated insurers issuing policies on a reserve basis and doing the same classes of insurance as this Bureau; and such certificate shall be held by the Bureau during its continued mainte-

nance of such surplus. The subscriber shall have no liability for assessment on a policy issued while such certificate remains in effect. Should such certificate be revoked by the Insurance Commissioner on account of the non-maintenance of said amount of surplus, the subscriber's contingent liability for losses and expenses under any policy issued subsequent to such revocation or remaining in force beyond the date fixed for the next payment of premium deposit shall not exceed an amount equal to and in addition to the amount of premium deposit provided in the policy.

(f) For the protection of the subscribers, a Reserve Fund shall be maintained equal in the aggregate to the amount to be determined by the Insurance Board. Said Reserve Fund may be maintained by debiting each subscriber, at any time designated by the Executive Committee, with a sum based on a percentage of his annual premium deposit; such percentage to be determined by the Executive Committee and to be uniform in respect of the several subscribers. The Reserve Fund so maintained, including any amounts credited thereto from any other source, shall not be ex- [fol. 257] penses or appropriated, in whole or in part, for any other purpose than the purposes herein specified, to wit: In the discretion of the Executive Committee said Reserve Fund may be applied to the payment of losses and or expenses and, when expedient and justified by the Bureau's financial condition to the payment of savings to subscribers upon expiration of their policies; provided that the amount of any savings so paid to such subscribers in any one month shall be based on a uniform percentage of their annual premium deposits.

(g) Upon expiration date of the policy of any subscriber, the amount of his credit balance, representing that part of his premium deposit which has not been used for the purposes hereinbefore provided, may be paid to such subscriber; provided, however, that if, in the determination of the Executive Committee, the payment of such credit balances on all policies expiring in any one month is not justified by the Bureau's financial condition or is not in the interests of all the subscribers, the whole of such credit balances or a uniform percentage of each shall be transferred to the Reserve Fund for the protection of all the subscribers.

(h) In event of the Bureau discontinuing business, any part of the Reserve Fund and of all other funds of the Bureau not standing to the credit of individual subscribers, and not required for the payment of losses and or expenses and or reinsurance premiums, shall be distributed among the existing subscribers; each such subscriber receiving such proportion thereof, in addition to any amount standing to his individual credit, as his annual premium deposit on policies in force on the date of discontinuance of business bears to the total annual premium deposits on policies then in force.

(i) The attorney, or the substituted attorney, with the authority of the Executive Committee, shall have power to [fol. 258] institute such legal proceeding or action either in his or their own name or in the name of the Inter-Insurance Bureau as may be necessary to enforce the provisions of the Power of Attorney and of the policy.

(j) The Bureau may sue or be sued in its own name. Should it become necessary for any reason to sue the Subscribers of said Bureau, the Subscriber to avoid a multiplicity of suits shall not bring or maintain any suits or other proceedings at law, or in equity, for the recovery of any claim upon, under or by virtue of such contract of indemnity against more than one of the Subscribers at any time, nor shall any suit or proceeding be maintained by him in any court other than the highest court of original jurisdiction. In the event that the final decision in any such suit or other proceeding shall be adverse to him, such Subscriber will bring no suit or other proceeding against any other Subscriber. A final decision in any suit or other proceeding by any Subscriber against any of the other Subscribers shall be taken to be decisive of similar claims, so far as the same subsist against such Subscriber, absolutely fixing his liability in the premises, and he shall accept and abide by such final decision in the same manner and to the same effect, as if he had been sole defendant in a similar suit or proceeding as to the similar claim against him, so far as the same may subsist, save and except, however, as to the matter of costs and disbursements.

(7) Risks assumed by the Bureau shall be restricted to automobiles of the private pleasure car and commercial car types. Only members in good standing of the California State Automobile Association or corporations or firms

in which such members are officers or partners shall be eligible to apply for insurance in the Bureau.

(8) Policies issued by the Bureau shall be limited to the standard forms and standard endorsements thereof, [fol. 259] covering the risks, including liability and disability, incident to the sale, purchase, leasing, ownership, maintenance, operation and use of automobiles.

(9) The Executive Committee shall prescribe and fix the rates of premium deposit required for insurance and may limit and define the hazards that may be assumed by the Bureau and the amount of insurance that may be written.

(10) All funds of the Bureau shall be under the exclusive control of the Executive Committee and may be invested by said Committee; provided that such amount of the Bureau's assets as are required to be maintained by said Reciprocal or Inter-Insurance Act shall be maintained in cash or deposits in solvent banks, or invested in securities of the kind designated for the investment of assets of incorporated insurers having a capital stock by the laws of the State of California.

(11) The depositories of the Bureau shall be such savings and commercial banks of the State of California as may be designated by the Executive Committee; and the uninvested funds of the Bureau shall be deposited therewith subject to check signed by such person or persons as may be designated by the Executive Committee.

(12) All amounts consisting of interest on investments and or bank deposits received by the Bureau shall inure to the benefit of each subscriber, monthly, in such proportion as his individual annual premium deposit in force bears to the total annual premium deposits in force.

(13) The books and accounts of the Bureau shall be audited by a certified public accountant employed from time to time at the discretion of the Executive Committee, and at least once each calendar year, and shall be at all times open to the inspection of any member of the Board.

(14) The Executive Committee shall have power to enter [fol. 260] into a contract of employment with the Manager, or any substitute, and to fix his compensation, provided that such compensation for any given period shall not exceed one (1) per centum of the total net premium deposits received during such period.

(15) The action of a majority of the Executive Com-

mittee at any regularly called meeting shall be deemed to be the action of the Committee.

(16) These rules and regulations may be amended by the affirmative vote of two-thirds of the members of the Insurance Board at any regularly called meeting.

[fol. 261] EXHIBIT "G"

STATE OF CALIFORNIA, DEPARTMENT OF INSURANCE

Certification

I, Wallace K. Downey, Insurance Commissioner, do hereby certify that the attached photostat is a photostatic copy of the face of the Power of Attorney and Application for Automobile Insurance filed with the Insurance Commissioner on the 1st day of October, 1943.

Wallace K. Downey, Insurance Commissioner, By Frank Fullenwider, Deputy.

(Here follows 1 Photolithograph, side folio 262)

Reip G.

134A

CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER-INSURANCE BUREAU

APPLICATION FOR AUTOMOBILE INSURANCE AND POWER OF ATTORNEY

WHEREAS, at San Francisco, Calif., an office is conducted under the name of CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER-INSURANCE BUREAU, [illegible]

NOW, THEREFORE, the herein undersigned [illegible] ... E. D. [illegible] ... with full power of substitution and revocation [illegible] ... for the following purposes, to wit:

1. To exchange with other subscribers in such Inter-Insurance Bureau, indemnity, including liability and disability insurance, [illegible]

2. It is expressly understood that this Power of Attorney shall be exercised strictly in conformity with and subject to the rules and regulations of the [illegible] ... STATE AUTOMOBILE ASSOCIATION, and such Rules and Regulations and all amendments thereof, to be at all times on file in the office of said Bureau.

DECLARATIONS BY THE APPLICANT

The following are statements of facts known to and declared by the applicant [illegible] ... by the Bureau relying on the truth thereof.

1 NAME OF APPLICANT: Mr ☐ Mrs ☐ Miss ☐ ____________________ (Print name clearly)

MAILING Address ______ No. ______ Street ______ Town ______ County ______ CALIFORNIA State

Secondary Address ______ No. ______ Street ______ Town ______ County ______ CALIFORNIA State

OCCUPATION of the applicant is ____________________

EMPLOYER ____________________ (If applicant is a married woman, show occupation of husband and name of employer.)

GARAGE: The automobile will be principally garaged at the above address, unless otherwise stated here ____________________

LOSS PAYEE: Any loss under coverages X, C1, C2, D and E is payable as interest may appear to the applicant and ____________________

2 POLICY PERIOD From ______ To ______ 12:01 A.M. Standard time at the address of the applicant as stated herein.

3 DESCRIPTION OF THE AUTOMOBILE and facts respecting its purchase by the applicant

Trade Name	Model	Year	No. Cyl.	Type of Body	Serial No.	Motor No.

Purchased by Applicant				The automobile is unencumbered unless otherwise stated hereon		Purchased Originally	
Month	Year	New ☐ / Used ☐	Actual Cost	Encumbrance	Due Date of Final Installment	Date	Cost
			$	$			

4

COVERAGES and Limits of Liability									
BODILY INJURY LIABILITY		MEDICAL PAYMENTS	PROPERTY DAMAGE LIABILITY	COMPREHENSIVE Including Fire, Theft, Windstorm	COLLISION OR UPSET		FIRE	THEFT	
					DEDUCTIBLE	OPTION			
Limits of Liability		Limit	Limit	Limit					
Each Person	Each Accident	Each Person	Each Accident	Actual Cash Value	Amount Deductible from Each Claim	Subject to Assessment Premium Deposit of			
$	$				$	$	$	$	

Premium Deposits									Total Premium Deposit
$	$	$			$	$	$	$	$

5 USE The purpose for which the automobile is to be used are ____________________ (Pleasure and business, or commercial)

6 Except with respect to encumbrance, conditional sale, mortgage or other encumbrance the applicant is the sole owner of the automobile, unless otherwise stated here ____________________

7 No insurer has cancelled any automobile insurance issued to the applicant, nor declined to issue such insurance, unless otherwise stated here ____________________

(If so, give the name of Company, date cancelled, policy number and reason for refusal or cancellation)

To whom is policy to be sent? ____________________ (Give name and address)

The applicant hereby appoints the above named payee as agent for the purposes of (a) receiving delivery of said policy, (b) receiving payment of any unearned premium deposit refund due under this policy.

IN WITNESS whereof, I herewith set my hand and seal this ______ day of ______ 19 ______ At ______ AM/PM

______ Witness ______ District Office ______ (Signature of Applicant) (L.S.)

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IV

That the term for which said corporation is to exist is Fifty (50) years from and after the date of its incorporation.

V

That the number of directors of said corporation shall be thirteen (13), and the names and residences of the directors who are appointed for the first year are:

Name	Place of Residence
L. P. Lowe,	San Francisco, California.
Oscar Cooper,	San Francisco, California.
Harry N. Stetson,	San Francisco, California.
J. D. Grant,	Burlingame, California.
Jno. Martin,	Ross, California.
Samuel G. Buckbee,	San Francisco, California.
Chas. C. Moore,	San Francisco, California.
Herbert E. Law,	San Francisco, California.
R. B. Hale,	San Francisco, California.
Leon Sloss,	San Francisco, California.
John A. Britton,	San Francisco, California.
E. R. Dimond,	San Francisco, California.
R. M. Hotaling,	San Francisco, California.

VI

That said corporation has no capital stock and no shares of stock.

In witness whereof, we have hereunto set our hands and [fol. 265] seals this 30th day of August, A. D. 1907.

(Signed) L. P. Lowe; Oscar Cooper; Harry N. Stetson; J. D. Grant; Jno. Martin; Samuel G. Buckbee; Chas. C. Moore; Herbert E. Law; R. B. Hale; Leon Sloss; John A. Britton; E. R. Dimond; R. M. Hotaling. (Seal)

[fol. 266] STATE OF CALIFORNIA,
City and County of San Francisco, ss.

On the 30th day of August, in the year One Thousand Nine Hundred and Seven, before me John J. Quinn, a Notary Public, in and for said City and County, residing therein, duly commissioned and sworn, personally appeared

L. P. Lowe, Oscar Cooper, Harry N. Stetson, J. D. Grant, Jno. Martin, Samuel G. Buckbee, Chas. C. Moore, Herbert E. Law, R. B. Hale, Leon Sloss, John A. Britton, E. R. Dimond and R. M. Hotaling, known to me to be the persons described in, and whose names are subscribed to and who executed the annexed instrument and they acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office, in the City and County of San Francisco, the day and year last above written.

(Signed) John J. Quinn, Notary Public, in for the City and County of San Francisco, State of California.

No. 2908. Indexed. Filed Aug. 31, 1907. H. I. Mulcrevy, Clerk; L. J. Welch, Deputy Clerk.

[fol. 267] RESPONDENT'S EXHIBIT I-1

ARTICLES OF INCORPORATION AS AMENDED 1929 OF CALIFORNIA STATE AUTOMOBILE ASSOCIATION

Know All Men by These Presents:

That we, the undersigned, residents and citizens of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a private corporation and of incorporating under the laws of the State of California a corporation to be known as and by the name of California State Automobile Association and we hereby certify:

I

That the name of the said corporation shall be California State Automobile Association.

II

That the purposes for which said corporation is formed are:

To promote, advocate and encourage the construction, improvement, betterment, maintenance and repair of proper and necessary roads and highways within the State of Cali-

fornia and elsewhere and to properly mark the same with signs required for the information, guidance and warning of users thereof and the regulation of traffic thereon;

To urge the adoption of just, rational and intelligent legislation in reference to roads and highways and the use thereof in said State and elsewhere;

To furnish advice, information and assistance of all kinds to owners and operators of self-propelled vehicles of all kinds operated on land or sea or in the air and to establish and maintain offices, agencies and bureaus in said State and elsewhere for the purpose of collecting and disseminating such information and rendering such service; [fol. 268] To protect and promote the legitimate interests of its members in connection with the purposes herein mentioned and otherwise:

To affiliate with or associate with itself similar organizations;

To promote, supervise and conduct contests designed to determine the efficiency or self-propelled vehicles of all kinds and to certify to the results of such contests.

And said corporation shall have the power to carry out the purposes of its organization as hereinbefore outlined and in furtherance thereof shall have power to buy, sell, lease and let real and personal property; to borrow and to lend money with or without giving or taking security; to collect and receive enrollment fees and dues from the members to be expended in carrying out the purposes hereinabove mentioned and to receive subscriptions, donations and other payments to be so expended in similar activities for the benefit of the members or for the public welfare; to enter into, make, perform and carry out contracts of every kind and for any lawful purpose and generally to do all such things as may be necessary, suitable, requisite or convenient for the accomplishment of the purposes hereinbefore set forth.

III

That the place where the principal business of this corporation is to be transacted is the City and County of San Francisco, State of California.

IV

That the term for which said corporation is to exist is fifty (50) years from and after the date of its incorporation.

V

That the number of Directors of said Corporation shall be twenty-one (21), and the names and residences of the [fol. 269] directors who are appointed for the first year are:

Name	Place of Residence
L. P. Lowe,	San Francisco, California.
Oscar Cooper,	San Francisco, California.
Harry N. Stetson,	San Francisco, California.
J. D. Grant,	Burlingame, California.
Jno. Martin,	Ross, California.
Samuel G. Buckbee,	San Francisco, California.
Chas. C. Moore,	San Francisco, California.
Herbert E. Law,	San Francisco, California.
R. B. Hale,	San Francisco, California.
Leon Sloss,	San Francisco, California.
John A. Britton,	San Francisco, California.
E. R. Dimond,	San Francisco, California.
R. M. Hotaling,	San Francisco, California.

VI

That said Corporation is not organized for pecuniary profit and shall have no capital stock, nor shall any shares of stock be issued, but each member thereof shall have one vote only on all matters requiring the action or sanction of the membership.

In witness whereof, we have hereunto set our hands and seals this 30th day of August, A. D. 1907.

L. P. Lowe, Oscar Cooper, Harry N. Stetson, J. D. Grant, Jno. Martin, Samuel G. Buckbee, Chas. C. [fol. 270] Moore, Herbert E. Law, R. B. Hale, Leon Sloss, John A. Britton, E. R. Dimond, R. M. Hotaling. (Seal.)

STATE OF CALIFORNIA,
City of County of San Francisco, ss:

On the 30th day of August, in the year One Thousand Nine Hundred and seven, before me, John J. Quinn, a Notary Public, in and for said City and County, residing therein, duly commissioned and sworn, personally appeared, L. P. Lowe, Oscar Cooper, Harry N. Stetson, J. D. Grant, Jno. Martin, Samuel G. Buchbee, Chas. C. Moore, Herbert E. Law, R. B. Hale, Leon Sloss, John A. Britton, E. R. Dimond and R. M. Hotaling, known to me to be the persons described in, whose names are subscribed to and who executed the annexed instrument, and they acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office, in the City and County of San Francisco, the day and year last above written.

John J. Quinn, Notary Public in and for the City and County of San Francisco, State of California. (Seal.)

[fol. 271] RESPONDENT'S EXHIBIT I-2

By-Laws of the California State Automobile Association as Amended April 26, 1946

Article I

Name

The Name of the Association Shall Be California State Automobile Association

Article II

Purposes and Powers

Section 1. The purposes and powers of this Association shall be those which are set forth in the Articles of Incorporation as now existing or as the same may be hereafter amended.

Article III

Membership

Section 1. All persons interested in the objects of this Association as hereinabove set forth shall be eligible to membership upon invitation by the Association. There shall be two classes of individual members, namely, "Regular Members" and "Associate Members." An Associate membership shall only be issued in conjunction with a Regular membership to such persons as may be determined by the Board of Directors and subject to such rules and regulations as it may prescribe.

Section 2. Similar Associations interested in the objects of this Association shall be eligible to membership.

Section 3. All notices given or statements or other documents sent to a member pursuant to these By-Laws, or otherwise, shall be deemed to have been given or sent to the Associate Member when mailed in the name of and to the address of record of the Regular Member.

Article IV

Entrance Fees and Dues

Section 1. The entrance fee for each individual Regular Member shall be fixed by the Board of Directors and shall not exceed $5.00 (Five Dollars). Such fee shall be accompanied with application for membership. There shall be no entrance fee for Associate Members.

Section 2. Each individual Regular Member is to pay as annual dues $12.00 (Twelve Dollars). The annual dues of an individual Associate Member shall be fixed by the Board of Directors and shall not exceed $6.00 (Six Dollars).

Section 3. The dues of similar Associations admitted to membership as a body shall be determined by the Board of Directors.

[fol. 272] Section 4. The Board of Directors may at any meeting levy an assessment or assessments for any special purpose consistent with these By-Laws, upon the members of the Association, such assessment or assessments upon any individual member not to exceed the total sum of Two Dollars ($2.00) in any one year. The notice of assessment

shall specify the time at which such assessment becomes payable.

Section 5. Any member of this Association whose dues or assessments shall remain unpaid for thirty (30) days after they have become due shall be notified by the Secretary that unless such arrears are paid within thirty (30) days thereafter such membership may be suspended or terminated as hereinafter provided.

Section 6. If any dues or assessments shall remain unpaid for sixty (60) days after they have become payable, the membership of any member thus delinquent may be suspended or terminated by the Board of Directors without further notice.

Article V

Government

Section 1. The general management of the policy, affairs, funds and the property of this Association shall be vested in a Board of Twenty one (21) Directors, of whom seven (7) shall constitute a quorum.

Section 2. The officers of this Association shall be a President, a First Vice-President, a Second Vice-President, a Third Vice-President and a Treasurer who shall be elected from among the members of the said Board of Directors at their first Regular meeting following the Annual Membership meeting and a Secretary who need not be a Director. The Board of Directors may also appoint a General Manager, an Assistant Secretary and an Assistant Manager. The offices of Secretary and General Manager may be held by the same person and the offices of Assistant Secretary and Assistant Manager may also be held by one person.

Section 3. If at any time the President shall be unable to act by reason of absence or otherwise, the senior Vice-President present at the meeting shall take his place and perform all the duties of the President. If neither the President nor any of the Vice Presidents are present at any meeting of the Board of Directors, a Chairman may be chosen by a majority vote to preside and act at such meeting.

Article VI

Election of Directors

Section 1. The Directors shall be elected by ballot at the Annual Meeting of the members from the individuals comprising the membership.

Section 2. Subject to the provisions of the following section the Directors shall take office on the day of their election, and their term of office shall be for a period of three years or until their successors are elected.

Section 3. At the first meeting of the Directors elected at the Annual Meeting held in the year 1922, the directors so elected shall draw lots in such manner as they may fix for the purpose of determining which of said directors shall be deemed to have been elected for a term of three years, which of said directors shall be deemed to have been elected for a term of two years and which of said directors shall be deemed to have been elected for a term of one year. When it [fol. 273] has been determined by lots as hereinabove provided that seven of said directors shall be deemed to have been elected for a term of three years, and that seven of said directors shall be deemed to have been elected for a term of two years, and that seven of said directors shall be deemed to have been elected for a term of one, the terms of office of said directors shall expire respectively in accordance with the periods so fixed, and thereafter seven directors only shall be elected annually at the annual meeting of the members and the seven directors so elected annually by the membership shall be deemed elected for the term of three years, or until their successors are elected and qualified.

Article VII

Vacancies

Section 1. Whenever any vacancy shall occur in the membership of the Board of Directors, such vacancy may be filled by appointment by the President, ratified by a majority of the Board of Directors, and the term of such Director shall expire at the end of the term for which his predecessor was elected as herein before provided.

Section 2. Any officer or Director may be removed from office by a two-thirds (⅔) vote of the entire membership of

the Board of Directors at any Regular meeting or at any Special meeting called for that purpose.

Article VIII

Powers and Duties of Directors

Section 1. The Board of Directors shall have power:

First: To elect and remove at pleasure all the other officers, agents, attorneys in fact, servants and employees of this Association; prescribe such duties for them as may not be inconsistent with the law or these By-Laws, fix their compensation and at their option require from them security for faithful service.

Second: To conduct, manage, and control the affairs and business of this Association, and to that end, to make such rules and regulations not inconsistent with the law or these By-Laws as it may deem best.

Third: To fix from time to time the place of the office of the Association and to adopt and use a corporate seal.

Fourth: To cause to be kept a complete record of all its minutes and acts and of the proceedings of the members, and to present a full statement at the regular annual meeting of the members showing in detail the assets and liabilities of this Association and generally the condition of its affairs.

Fifth: To act for and represent this Association in all matters affecting its policy, purposes, and interests and to instruct and authorize any of the officers of this Association or any Director or agent to represent it in executing its orders.

Sixth: To fix or remit penalties for violation of rules or for conduct of any member detrimental to the welfare of this Association, and to enforce the same.

[fol. 274] *Seventh:* To allow its officers, Directors, agents or attorneys, such sums for service, clerk hire and expenses as it in its discretion may see fit but no compensation for services shall be allowed the President, any Vice-President or any of the Directors as such.

Eighth: To authorize and inaugurate by resolution at any time a women's Auxiliary to this Association under such rules and regulations for its government as the Directors may see fit to prescribe.

Ninth: To perform such other duties and to exercise such other powers as properly devolve upon a Board of Directors, provided that none of the powers and duties shall be contrary to law or to these By-Laws.

Article IX

Duties of the Officers

Section 1.—President

The President shall preside at all meetings of this Association and of the Board of Directors; call special meetings of the members and also of the Board of Directors at such times as he shall deem proper or as is provided in these By-Laws, affix the name of this Association to and sign all instruments in writing that may require the same and have been approved by the Board of Directors; supervise and control, subject to the direction of the Board of Directors, all the officers, agents, attorneys, servants and employees of this Association and the affairs of the Association in general and discharge such other duties as may be required of him by the Board of Directors consistent with the law and these By-Laws.

Section 2—Vice Presidents

The Vice-Presidents shall assist the President in discharging his duties and functions and in the absence of the latter shall successively succeed to the functions and perform the duties which would devolve upon the President if present.

Section 3—Treasurer

The Treasurer shall receive all the funds of this Association and shall deposit the same in such bank or banks as the Board of Directors may from time to time direct in the name of California State Automobile Association and the same shall be paid out only under the direction of the Board of Directors; keep regular accounts and submit the same to the Board of Directors whenever required; prepare and submit to the annual meeting of the members of the Association a statement showing the financial condition of this Association; and shall perform such other duties as may from time to time be fixed by the Board of Directors.

Section 4—Secretary

The Secretary shall keep a full and complete record of the proceedings of the Board of Directors and of the meetings of the members; keep the seal of the corporation and affix the same to all instruments executed by the President which may require it; countersign all instruments in writing executed by the President when thereto directed by the Board of Directors; keep a list of the names and addresses of the members of this Association; notify members of election to membership, of arrears in dues or assessments and of the meetings of this Association; conduct the corre- [fol. 275] spondence of the Association as thereto directed by the Board of Directors or by the President or other person or body acting under the authority of the Board of Directors; make a report to this Association at the annual meeting of the Board of Directors and of the members of this Association, and perform generally such services as the Board of Directors may from time to time direct.

Section 5

The Assistant General Manager shall perform the duties of the General Manager in the event of his absence or inability to act and the Assistant Secretary shall perform the duties of the Secretary in the event of his absence or inability to act.

Article X

Committees:

Section 1. The Board of Directors may appoint an Executive Committee consisting of the Chairmen of the various standing committees.

Section 2. Such Executive Committee, if chosen, shall have all the powers of the Board of Directors which may be given consistently with the law and such Executive Committee shall exercise such powers in the name of this Association.

Section 3. The Executive Committee shall keep minutes of its proceedings and such minutes shall be entered by the Secretary in the book of proceedings of the Board of Directors.

Section 4. The Board of Directors or the Executive Committee, if appointed, must, at least sixty (60) days before the date of any election appoint a Nominating Committee. The duties of the Nominating Committee shall be as hereinafter stated.

Section 5. The Board of Directors or the Executive Committee, if appointed, may prescribe the necessary regulations for application for membership or may appoint a Membership Committee and invest it with all necessary powers, including, if deemed advisable, the powers of selecting members without the necessity of presenting their candidacy to the Directors or to the Executive Committee.

Section 6. The Board of Directors or the Executive Committee, if chosen, may appoint a County Committee in each county of the State, consisting of five (5) persons who must be members of this Association. If deemed advisable, the chairman only of such county committee shall be appointed with power to appoint the four remaining members of the Committee. County Committees shall represent the Association in their respective counties, and the duties of such committees shall be to further the objects of this Association.

Section 7. The Board of Directors or the Executive Committee, if chosen, may appoint such other committees as it may see fit, and shall have power to discontinue any committee or remove any member thereof at will.

Article XI

Nomination and Election of Directors

Section 1. At least thirty (30) days prior to the date of the Annual Meeting the Nominating Committee shall mail to each member of this Association at his last known address a list containing the names of the members proposed by said Nominating Committee as and for Directors for the ensuing year. Such list shall be known as the Regular Ticket.

[fol. 276] Section 2. An additional list or ticket containing the same number of names may be submitted to the members for election, provided that there be filed with the Secretary at least twenty (20) days prior to the date of such election

a petition nominating such list and signed by at least one-twentieth (1/20) of the total membership of the Association. The Secretary shall in such event, and within five (5) days thereafter mail to each member at his last known address such additional list or ticket and such list shall be known as the Special Ticket.

At the ensuing election any member may vote for either ticket as a whole and the ticket securing the greater number of votes shall be declared elected.

Section 3. The Regular Ticket shall contain upon its face a copy of Section 2 of this Article.

Section 4. In the event of a failure to hold the election of Directors at the time contemplated in these By-Laws, the same may be held by order of the President at any subsequent time in the same manner and upon similar notice.

Article XII

Meetings of the Association

Section 1. The annual meeting of the members of this Association for the election of Directors and for the transaction of such business as may come before them, shall be held on the third Thursday in January of each year. If such Thursday falls on a holiday such meeting shall be held on the following Thursday.

Section 2. Special meetings of this Association may be called by the Board of Directors at pleasure upon fifteen (15) days' notice thereof mailed by the Secretary to each member at his last known address, and must be called upon a written request signed by at least one-twentieth (1/20) of the total membership of this Association and filed with the Secretary at least twenty (20) days before the date upon which such meeting is desired to be held. In case of such request so filed, the Secretary shall within five (5) days thereafter, mail to each member, at his last known address a notice of such special meeting.

Section 3. Every notice of special meeting shall set forth the purposes for which such meeting is called and no other business beyond that mentioned in the notice shall be transacted at such meeting.

Section 4. At all meetings of this Association, of which due notice has been given, members in attendance or represented by proxy shall constitute a quorum.

Article XIII

Meetings of Directors —

Section 1. The first meeting of the Board of Directors shall be held on the third Thursday in January of each year. If such day falls on a holiday then such meeting shall be held on the Thursday immediately following. For the purpose of organization and for no other purpose the Directors may vote in writing at such meeting for the election of officers and for the appointment of the Executive Committee without the necessity of being personally present. The Secretary shall be personally present to conduct such meeting and declare the results thereof.

[fol. 277] Section 2. All other meetings of the Board of Directors shall be held when and as called by the President or by a majority of the members of the Board.

Section 3. Notice of all meetings of the Board of Directors shall be given to each member of the Board by the Secretary at least one day prior thereto either by mail, telegraph, in person, or by telephone. If in person or by telephone the Secretary shall so attest in the minutes.

Article XIV

Absence of Quorum and Order of Business

Section 1. If a quorum either of this Association or of the Board of Directors shall not be present at any meeting, the presiding officer or in the absence of a presiding officer, the Secretary may adjourn the meeting to a day and hour fixed by him with the same effect as if a quorum had been present at such meeting and voted such adjournment, provided such adjournment shall not exceed fifteen (15) days.

Section 2. At all meetings the order of business, except when otherwise determined by vote of those present, shall be:

1. Reading of the Minutes.
2. Reports of Officers.

3. Reports of Committees.
4. Elections.
5. Unfinished Business.
6. New Business.

Article XV

Limitation of Expenditures

Section 1. Not more than twenty per cent (20%) of the funds of this Association may be authorized or expended for any one purpose in any one calendar year, without a written notice of intention to exceed said twenty per cent (20%) given to each member at least fifteen (15) days prior to the proposed authorization. Said notice shall set forth the nature and the amount of the proposed expenditure and if, before the expiration of said fifteen days, a majority of the members of this Association protest in writing against the same such expenditure shall not be authorized nor made.

Article XVI

Discontinuance of Membership

Section 1. Any member may withdraw from this Association by giving written notice of his resignation to the Board of Directors and such notice shall operate as a release and assignment to this Association of all such member's interest in the corporation and its property.

Section 2. Any person ceasing from any cause to be a member of this Association shall thereby forfeit all interest in the corporation and its property.

Article XVII

Enforcement of Rules

Section 1. Either the Board of Directors or the Executive Committee, if chosen, shall have power by vote of two thirds (⅔) of the members present at any meeting to fine, suspend or expel any member of this Association for conduct deemed harmful to the welfare, interest or character of the Association.

[fol. 278] Section 2. Any member so fined, suspended or expelled, shall have the right to appeal to the full Board of

Directors by written notice of appeal filed with the Secretary within one week after his own notice of the decision appealed from. Upon such appeal being taken, notice shall be given the appellant of the time and place fixed by the Board for the hearing thereof. Any director present at such meeting who is absent when action is taken may cast his vote by filing the same in writing with the Secretary and a vote of a majority of the Directors upon any matter involved in such appeal shall be final.

Article XVIII

Notices in General

Section 1. Wherever in these By-Laws not specifically provided notice shall be deemed to be complete upon the mailing thereof, postage prepaid in the United States Post Office directed to the person for whom it is intended at his last known address.

Article XIX

Amendments

Section 1. These By-Laws may be amended by a vote of two-thirds (⅔) of the Board of Directors at any meeting called for that purpose, but no proposition to amend these By-Laws shall be acted upon at any meeting of the Board of Directors unless a written notice thereof, containing a copy of the existing By-Law and stating the proposed change, shall have been given to each member of this Association at least fifteen (15) days prior to the holding of said meeting, and if, before the expiration of said fifteen days a majority of the members of this Association protest in writing against said proposed change such change shall not be made.

Article XX

Membership Card and Emblem

Section 1. The Board of Directors or the Executive Committee if chosen, shall adopt and provide a card of membership in this Association which shall be furnished to each individual member by the Secretary upon election to membership and payment of entrance fee and dues. Such card shall specify the time of expiration of member-

ship which shall be at the expiration of the time for which such members dues are paid.

Section 2. The Board of Directors or the Executive Committee if chosen may also adopt and provide a distinguishing official badge emblem or flag to be used by the members of this Association.

Article XXI

Fiscal Year

Section 1. The fiscal year of the Association for the purpose of conducting its business and estimating its income and expenses shall begin on the first day in January of each year and end on the thirty-first day of December of the same year.

[fol. 279] Know All Men by These Presents:

That we, the undersigned, being more than two-thirds (⅔) of the thirteen (13) members of the California State Automobile Association, do hereby adopt the same as the By-Laws of this Association.

In Witness Whereof: We have hereunto subscribed our names this fourteenth day of September, 1907.

Oscar Cooper, E. R. Dimond, L. D. Grant, R. M. Hotaling, Herbert E. Law, L. P. Lowe, Jno. Martin, Chas. C. Moore, Leon Sloss.

[fol. 280] Respondent's Exhibit "J"

California Automobile Assigned Risk Plan

Voluntary Plan for Granting Automobile Bodily Injury and Property Damage Insurance to Specified Risks Unable to Secure it for Themselves.

Article I—Introduction and Miscellaneous Provisions

Sec. 1. Purposes of Plan

The purposes of this Plan are:

(a) To provide a means by which a risk required to furnish proof of financial responsibility pursuant to

and as required by the California Vehicle Code, or that is required to furnish evidence of bodily injury and property damage liability insurance to the California Railroad Commission (except risks exclusively carrying passengers for hire or compensation), that is in good faith entitled to Automobile Bodily Injury and Property Damage Liability Insurance in the State, but is unable to secure it for itself, may be assigned to an admitted insurer.

(b) To establish a procedure for the equitable distribution of such assigned risks among such admitted insurers.

Sec. 2.

This Plan is a voluntary agreement among all of the insurers, both "stock" and "non-stock," transacting the business of automobile bodily injury liability insurance in the State, adopted in the interest of public service.

Sec. 3.

This Plan shall become effective within 15 days after all admitted insurers writing automobile bodily injury liability insurance in the State (excluding reinsurers which do not write any direct business) have subscribed to the Plan, and [fol. 281] shall apply only to risks that in good faith are entitled to such insurance and are within one of the classes described in Section 1.

Sec. 4.

This Plan shall be available so far as non-residents of the State are concerned, with respect to all motor vehicles registered in this State; that is, the place of registration, if the risk is required to have a license issued by the State of California, rather than the residential address is to govern whether or not a risk is eligible for assignment under the Plan.

Sec. 5. Administration of Plan

The Plan shall be administered by a Governing Committee and a Manager. The Governing Committee (hereinafter referred to as "the Committee") shall consist of five;

one representative from each of the following classes of insurers:

A. National Bureau of Casualty and Surety Underwriters.

B. Non-affiliated Stock Insurers.

C. National Association of Automotive Mutual Insurance Companies.

D. Non-affiliated Mutual Insurers.

E. Reciprocal Inter-Insurance Exchanges.

On a date fixed by the Committee, and annually thereafter, all insurers authorized to write automobile bodily injury liability insurance in the State of California and subscribers to the Plan shall elect the Committee to serve for a period of one year and until their successors have been elected. Such election shall be held at an annual meeting to be called by the Committee upon 20 days' notice in writing to all subscribers of the Plan. A majority of the subscribers shall constitute a quorum and voting by proxy shall be permitted. At such annual meeting each respective group of insurers heretofore described shall elect its repre- [fol. 282] sentatives to the Committee. Upon failure so to do, a representative may be chosen from the group so failing to elect a representative by those in attendance at such annual meeting.

Sec. 6. Duties of Governing Committee

The Committee shall meet as often as may be required for the purpose of reviewing assignment of risks by the Manager and performing the general duties of administration of the Plan. Three members of the Committee shall constitute a quorum.

Sec. 7.

The Committee shall select and appoint a Manager of the Plan for the ensuing year, and shall determine his compensation.

The Committee shall have the authority and power to administer the Plan and shall keep a record of all proceedings of the Committee and be responsible for all property of the Plan. The Committee shall have authority to budget expenses for the estimated costs of administering the Plan, to levy assessments therefor, and to pay the expenses of

administering the Plan. The Committee shall collect all fees and other money payable to the Plan and deposit same in a bank designated by it to the credit of the California Automobile Assigned Risk Plan and shall keep proper account of all such funds. Funds of the Plan shall be disbursed only in payment of necessary expenses for the administration of the Plan. The Committee may designate one or more individuals to sign in the name and on behalf of the California Automobile Assigned Risk Plan Governing Committee in the transaction of its business, checks and drafts, subject to such approval as the Committee may determine. Each person authorized to sign checks or drafts on behalf of the Plan shall give a bond in such sum as the Committee may require for the faithful and honest discharge of his duties and for the faithful and honest receipt, custody and disbursement of the funds of the Plan.

[fol. 283] Sec. 8.

The Committee shall semi-annually, as of the first day of July and January, report in writing to all subscribers to the Plan the assignments made under this Plan for the preceding six months, in such form and detail as the Committee may determine. The Committee shall also semi-annually submit to all subscribers to the Plan a true and correct statement of all receipts and disbursements of the Committee for the period subsequent to the last previous report.

Sec. 9. Effective Date

The Plan shall become effective 12:01 a.m. of a date to be fixed by the Committee in accordance with the provisions of Section 3.

Sec. 10. Coverage Available under Plan

No insurer shall be required to write a policy for limits higher than the standard limits of $5,000/$10,000 bodily injury and $5,000 property damage, unless such limits are required by the law or regulation under which the evidence of coverage is to be filed. The insurer to which the risk is assigned shall comply with the filing requirements applicable to the risk.

The following rules shall govern the insuring of risks which have been unable to obtain automobile bodily injury

and property damage liability insurance and are within one of the classes described by Section 1. The Plan shall apply only to risks that in good faith are entitled to such insurance.

Article II—Eligibility

Sec. 20. Qualifications

No applicant shall be eligible to this Plan unless within 60 days prior to the date of his application for insurance under this Plan he has applied for both automobile bodily injury and property damage liability insurance to at least THREE insurers, including the carrying insurer if the risk [fol. 284] is insured at the time of making the application, authorized to write such insurance in the State, and has been definitely refused coverage by each such insurer in writing on the letterhead of the insurer and signed by a full-time salaried employee of the insurer, or by each such insurer in writing signed by an authorized representative of such insurer, the names of which authorized representatives have been specifically designated and filed in writing by each such insurer with the Manager of the Plan. No individual signing such a letter as the "authorized representative" of any insurer shall sign any other such letter to the same applicant in the capacity of an authorized representative of any other insurer, and no office or agency representing more than one insurer shall furnish more than one such letter to any applicant.

Sec. 21.

Each insurer subscribing to this Plan has, by such subscription, indicated its willingness to furnish letters of declination in the form and manner prescribed in this Article.

Sec. 22. Convictions

This Plan shall apply only to risks that in good faith are entitled to such insurance. A risk shall not be considered to be in good faith entitled to insurance nor is an insurer required to extend coverage in any case in which the applicant or anyone who will drive the motor vehicle has:

(a) During a three-year period immediately preceding the date of application been convicted more than twice of one, or more than once each for two, of the

following offenses growing out of separate violations of the law of this State:

(1) Driving a vehicle while intoxicated or under the influence of intoxicating liquor in violation of Section 502 of the Vehicle Code.

[fol. 285] (2) Driving a vehicle in a reckless manner where injury to person actually results therefrom.

(b) During the same period been convicted more than once of one, or once each for two or more, of the following offenses growing out of separate violations of the law of this State:

(1) Failing to stop and report when involved in an accident as required by Section 480 of the Vehicle Code.

(2) Manslaughter or negligent homicide resulting from the operation of a motor vehicle.

(3) Driving when addicted to the use, or under the influence, of narcotics or other drugs.

(4) Theft or unlawful taking of a vehicle in violation of Section 503 of the Vehicle Code, or grand theft of a motor vehicle.

(5) Any felony in the commission of which a motor vehicle is used.

(6) Driving while under the influence of intoxicating liquor and causing the death of or bodily injury to any person in violation of Section 501 of the Vehicle Code.

(7) Operating during period of revocation or suspension of registration or license.

(8) Permitting any unlawful use of an operator's or chauffeur's license, or any other offense under Section 338 of the Vehicle Code.

(c) If the applicant or anyone who will drive the motor vehicle has been convicted more than once for the offenses listed under Paragraph (a) and once under Paragraph (b) above, he shall not be considered to be in good faith entitled to insurance under this Plan.

[fol. 286] Sec. 23. Disabilities

No risk will be eligible if the applicant or anyone who normally or usually drives the automobile or anyone who

drives it with the express or implied consent of the applicant has a major mental or physical disability.

Sec. 24. Illegal Registration

A risk shall not be considered to be in good faith entitled to insurance nor shall coverage be extended in any case if the applicant has during a period of twelve months immediately preceding the date of application intentionally registered a motor vehicle in the State illegally.

Sec. 25. Failure to Pay Prior Automobile Insurance Premiums

A risk shall not be considered to be in good faith entitled to insurance nor shall coverage be extended in any case in which the applicant or anyone who normally or usually drives the automobile or anyone who drives it with the express or implied consent of the applicant has failed to meet all obligations to pay automobile bodily injury and property damage liability insurance premiums contracted during the previous twelve months.

Sec. 26. Re-Certification of Operator's License of Applicant

If the designated insurer, after investigation of the experience, physical or other conditions of any risk applying for coverage under this Plan, believes that reasonable doubt exists as to whether such applicant should continue to be licensed to operate a motor vehicle in this State, such insurer to whom the risk has been assigned may request the Director of Motor Vehicles to re-certify the ability of such applicant to continue to hold an operator's license; such applicant will not be eligible under this Plan until and unless the applicant is re-certified by the Director of Motor Vehicles as competent to hold and use an operator's license, either by a driving test or such other means as the Director may require.

[fol. 287] Article III—Rates

Sec. 30.

All risks assigned under this Plan shall be subject to the rules, rates, minimum premiums and classifications in force, and to the Rating Plans applicable thereto, which the

insurers to which risks may be assigned use in the State, plus an additional charge amounting to a multiplier of 1.10 for public passenger-carrying vehicles, such as taxicabs, public livery, private livery, buses, etc., and for long haul trucking risks, and for all others a multiplier of 1.15.

Sec. 31.

If the experience, physical or other conditions of any risk applying for coverage under this Plan are such as to indicate that the hazard of the risk is greater than that contemplated by the rates or minimum premiums normally applicable to the risk, the insurer may charge such rates and minimum premiums as are commensurate with the greater hazard of the risk, subject to approval by the Governing Committee and review, if sought, by the Insurance Commissioner. Any special increase in rate in accordance with this section shall be deemed to include the additional charge of 1.10 for public passenger-carrying vehicles and long haul trucking risks, or 1.15 for all others.

Article IV—Applications for Assignment

Sec. 40. Application for Assignment Form

The application for insurance under this Plan must be signed in every case by the applicant, but may be submitted by the applicant or his producer. It must be accompanied by an investigation fee of Five Dollars, in the form of a certified check or money order, which shall be paid to the Plan and credited against the premium if the risk is assigned and accepted, and the applicant pays the balance of the premium in accordance with this Plan; if not, the fee is not returnable. The application shall be filed on a prescribed form accompanied by the original letters from [fol. 288] at least THREE insurers refusing such coverage. Such application shall require:

(a) Complete underwriting and character information; and complete financial information where the coverage sought is to be written on a basis requiring final adjustment of the premium subsequent to the expiration of the policy.

(b) A statement by the applicant that he will maintain a complete record of his financial transactions

in such form and manner as the carrying insurer may reasonably require and that such record will be available at all times to the insurer at a designated place. This statement shall be required only where the insurance is to be written on a basis requiring final adjustment of the premium after expiration of the policy.

(c) That the applicant agrees to comply with all reasonable recommendations of the insurer made with the view to reducing the hazards of the risk.

(d) That the applicant agrees upon being notified to remit within 15 days to the insurer a certified check, money order, or bank draft payable to the designated insurer for the balance of the full premium for his policy.

(e) Certification of the application by an affidavit to be sworn to before a Notary Public.

Sec. 41. Application for Coverage

A risk which desires insurance and has been unable to obtain it for itself, and thus becomes an applicant under this Plan, shall proceed in accordance with this Article and the applicant may designate a licensed producer of record to act on his behalf in soliciting coverage from insurers as required by Section 20, and this Article, but in either case the applicant must sign the application form. [fol. 289] The fully completed application, in duplicate, accompanied by the insurers' original letters refusing such coverage, shall then be filed with the Manager of the Plan.

Sec. 42. Designation of Insurer

Upon receipt of an application for insurance properly completed, signed and attested, the Manager shall designate an insurer to whom the risk will be assigned for a period of twelve months and so advise the producer of record.

Sec. 43. Notification to Applicant

Within fifteen days after receipt of notice of designation from the Manager, the designated insurer shall notify the applicant either

(a) That, if the balance of the full premium as stated within such notice is received within 15 days or within such further reasonable period as the insurer may

agree to, it will issue a policy to become effective 12:01 a.m. of the day following the day on which such premium as stated in such notice is actually received by the insurer, or

(b) That it will not issue a policy for the reason that the applicant is not in good faith entitled to insurance under this Plan, in which event the reasons supporting such action shall be furnished the Manager.

A copy of each such notice shall be furnished the Manager and the producer of record.

When full premium payment has been received by the designated insurer and such insurer has actually issued a policy, the insurer shall immediately notify the Manager that it has actually issued a policy, giving the Manager the policy number, amount of premium collected and the policy effective date.

[fol. 290] Sec. 50. Cancellations

(a) If after the issuance of a policy it develops that the applicant is not or ceases to be in good faith entitled to insurance or has failed to comply with reasonable safety requirements, or has violated any of the terms or conditions upon the basis of which the insurance was issued, or if unusual or unexpected circumstances develop, or if the insurance was obtained through fraud or misrepresentation, the insurer which issued the policy shall have the right to cancel the insurance in accordance with the conditions of the policy, but in all such cases the reasons supporting such action shall be filed with the Manager ten days prior to the effective date of cancellation.

If default occurs in the payment of premium upon any policy subject to interim adjustment, such policy shall automatically be subject to cancellation in accordance with the required notice as provided in the policy.

A copy of each such cancellation notice shall be furnished to the producer of record.

(b) If for any reason an assigned risk is canceled, the risk shall not be eligible for further consideration until the Manager is fully satisfied that the risk is in good faith entitled to insurance under the Plan.

Article VI

Sec. 60. Expirations and Renewals

(a) Any assigned risk which is dissatisfied with the designated insurer may upon reasonable notice request re-assignment upon expiration. Re-assignment shall be at the option of the Committee.

(b) Every insurer insuring a risk under the Plan shall notify the Manager and the applicant with copy [fol. 291] to the producer of record at least FORTY-FIVE days prior to the expiration date whether the company will

1. Write the renewal of the business voluntarily for its own account at the rates and classifications normally applicable to risks not subject to the Plan; or

2. Accept the renewal assignment of the risk under the Plan, or

3. Refuse the renewal assignment of the risk, giving reasons therefor; in which case the reasons supporting such action shall be furnished the Manager.

(c) If any insurer other than the one designated under the Plan wishes to carry the risk voluntarily at the rates and classifications normally applicable, such insurer may take over the coverage at expiration; or under the same conditions may take over the coverage at any time subject to agreement by the designated insurer.

Article VII

Sec. 70. Right of Appeal

Any applicant under the Plan or subscriber to the Plan who has a grievance respecting the operations of the Plan, may appeal in the first instance to the Committee (provided that, if an insurer represented on the Committee is a party to the controversy, the other members of the Committee shall designate another insurer of the same type to replace such insurer for the purpose of hearing the appeal), which shall review all evidence and render a decision. If a party in interest is dissatisfied with the

decision of the Committee, he may appeal to the Insurance Commissioner of the State, whose decision shall be final.

[fol. 292] Article VIII—Administration

Sec. 80. Costs of Administration

The reasonable costs of administering the Plan for each calendar year shall be determined periodically and apportioned to all subscribing insurers in such proportion as their net direct automobile bodily injury premium writings in the State bear to the total net direct automobile bodily injury premium writings of all subscribing insurers in the State during the preceding calendar year.

Sec. 81. Rules of Procedure—Forms and Supplies

Additional copies of the Plan, the application form and supplementary rules of procedure have been printed and may be obtained at cost upon requisition to the Manager or to the Purchasing Division of the National Bureau of Casualty and Surety Underwriters, 60 John Street, New York.

Every insurer should order its required supply of these items and furnish its branch offices and policy-writing agencies with an adequate stock of the forms. Application forms should be available to any applicant or producer of record upon request so as to minimize any delay in granting of coverage under the Plan to qualified applicants.

Sec. 82. Administration of Plan—Application for Coverage

The fully completed application, in duplicate, accompanied by the insurers' original letters refusing such coverage, shall then be filed with the Manager of the Plan, addressed to

The Manager
California Automobile Assigned Risk Plan
315 Montgomery Street, San Francisco

Sec. 83. Distribution and Assignment of Risks

The Manager shall distribute the risks which are eligible for coverage under the Plan, as far as practicable, to insurers in proportion to their respective net direct auto-

[fol. 293] mobile bodily injury premium writings—with due regard to exclusions under reinsurance agreements, treaties or contracts filed in writing with the Manager, and with due regard to the facilities of the insurer for servicing the risk. For purposes of assignment to all insurers, the Manager shall use the latest available net direct automobile bodily injury premium writings in California of calendar years ending December 31, for assignment of risks during the twelve months commencing on the next succeeding April 1st. Net premiums shall be gross written premiums prior to reinsurance assumed, less only return premiums and premiums on policies not taken.

Sec. 84.

Upon assignment of a risk to an insurer the Manager will forward to such designated insurer the original copy of the application form accompanied by the insurers' original letters refusing such coverage.

Sec. 85. Records

The Manager will keep adequate records of the risks assigned and as of December 31, 1942, and semi-annually thereafter, the Manager will prepare a report of the assignments made and any cancellation of such assignments, by insurer, for distribution to subscribers to the Plan.

Sec. 86. Calculation of Premium and Commission

The designated carrier will determine the premium to be charged in accordance with Article III of the Plan. Unless other special arrangements have been registered with the Committee, the designated insurer will pay the producer of record for his services in accordance with the following limits:

(a) For public passenger carrying vehicles and for long haul trucking risks, 5% of the total premium [fol. 294] charged and collected from the applicant as commission to a licensed producer designated by the assured, and 2½% of the total premium charged and collected from the applicant as field supervision allowance to the company to which the risk has been assigned or to its licensed agent.

(b) For all others, 10% of the total premium charged and collected from the applicant as commission to a licensed producer designated by the assured, and 2½% of the total premium charged and collected from the applicant as field supervision allowance to the company to which the risk has been assigned or to its licensed agent.

Any special increase in rate in accordance with Article III shall be deemed to include the surcharge permitted under the Plan to allow for payment of commissions.

Note: Commissions and field supervision allowances referred to above are to be computed on the basis of the total premium charged and collected from the applicant.

Sec. 87. Notification to Applicant or Producer of Record

If the insurer agrees to accept the assignment, it shall proceed in accordance with Section 43 of the Plan and shall duly notify the applicant through the producer of record or notify the applicant direct with a copy of such notification to the producer of record. A copy of such notification shall also be sent to the Manager, including therein a statement of the total amounts which applicant is required to pay for the coverage.

[fol. 295] Sec. 88. Premium Payments

Payments by the applicant shall be made as directed by the designated insurer.

Sec. 89. Notification to Manager of Issuance of Policy

When premium payment has been received and the designated insurer has actually issued a policy, the insurer shall immediately notify the Manager that it has actually issued a policy, and shall furnish the Manager with the policy number, effective date of such policy, and the amount of premium collected.

If at the end of the fifteen-day period or such further reasonable period as the designated insurer may allow the applicant, coverage is not accepted by the applicant, the designated insurer shall notify the Manager of this fact.

(These notifications to the Manager of the Plan are necessary in order that he, as Administrator of the Plan, may

have an accurate record of the risks actually assigned to insurers for which such insurers have actually issued policies, and will thus be able to distribute future assigned risks in equitable proportion to insurers' respective premium volumes.)

[fol. 296] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

No. 374555

Department Number Two

Honorable Edward P. Murphy, Judge

CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER-INSURANCE BUREAU, Petitioner,

vs.

WALLACE K. DOWNEY, Insurance Commissioner of the State of California, Respondent

Reporter's Transcript of Hearing

APPEARANCES

For the Petitioner: Messrs. Brobeck, Phleger & Harrison, by Moses Lasky, Esq., 111 Sutter Street, San Francisco, California.

For the Respondent: Hon. Fred N. Howser, Attorney General, by T. A. Westphal, Jr., Deputy and Harold Haas, Deputy, 600 State Building, San Francisco, California.

[fol. 297] Wednesday, June 30, 1948—10:30 o'clock A. M.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Lasky: This is a petition for writ of mandate brought here under the provisions of the Government Code as a mode of judicial review of an order of the Insurance Commissioner, Mr. Downey. Mr. Downey, after hearing has suspended the right of the petitioner California State Automobile Association Inter-Insurance Bureau to engage in the business of writing automobile insurance in this State. The basis of his action turns upon a statute which

was enacted by the legislature last year called the "assigned risk law". In broad substance, that law prescribes that the Insurance Commisioner may promulgate a plan whereby the various insurers are compelled, whether they want to or not, to issue automobile insurance to people who are unable to get it otherwise, people whose risks are so bad that insurance companies refuse to issue them insurance. The statute prescribed that after such plan was promulgated it was the legal duty of every insurer in the State to agree to abide by it and it provided that for failure to subscribe the Commissioner, after hearing could suspend.

Our client, the California State Automobile Association, refused to subscribe because it took the position that that statute was unconstitutional both under the State and Federal Constitutions for three reasons; first it was in violation of due process to compel the company to enter contracts against its will by insuring people it did not desire to [fol. 298], insure; second, as an unlawful delegation of power to the Insurance Commissioner since it prescribed no intelligent standard to promulgate the plan; and third, we contend the plan was in violation of the statute itself even though the statute were to be construed to be constitutional.

The Insurance Commissioner suspended our right to do business and the matter has been brought here. We came before the Presiding Judge and he issued a stay order setting aside the suspension, which is in effect until your Honor has in due course passed upon the matter.

Under the Government Code, the entire record of the proceedings below have been brought before this Court and filed by the respondent as required by law. We also have the contention that certain evidence which was offered below before the Commissioner was improperly excluded. In that respect, I would like to call attention to the provisions of Section 1094.5 of the Code of Civil Procedure:

> "Where the Court finds there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before respondent, it may enter judgment as provided in Subdivision E of this Section remanding the case to be reconsidered in the light of such evidence; or, in cases in which the Court is

authorized by law to exercise its independent judgment on the evidence, the Court may admit such evi- [fol. 299] dence at the hearing on the writ without remanding the case."

Counsel for the Commissioner and I have discussed the matter and I think the understanding is we have agreed that after your Honor has considered the matter and read the briefs which are on file, if you conclude the evidence was improperly excluded you may deem it is properly before you at this time.

Is that correct, Mr. Haas?

Mr. Haas: I would say this: That the offers of evidence were in the form of certain tabulations—statements. We have stipulated that we will not question the authenticity of those tabulations if offered here, but we are reserving our objection to relevancy. I believe that is the extent of the stipulation.

Mr. Lasky: Well, I had a witness on the stand from the Association who testified to a summary from the tabulations he had at that time.

Mr. Haas: Which summary was that?

Mr. Lasky: That was his statement of the loss ratio of the petitioner.

Mr. Haas: I think that we will have to stand on the record.

Mr. Lasky: Then, in that event, if your Honor decides that the evidence should have been admitted below, it will be necessary to return it below and have it admitted, because there is no procedure here for introducing evidence [fol. 300] at this time. We are here on the record.

The Court: All right. Let's go ahead now.

Mr. Lasky: The only matter in the petition that was denied was an allegation that California State Automobile Association had a membership of over 100,000. That was denied for lack of information and belief. I have shown counsel certain statistics on that,—and you are prepared to stipulate that the actual membership of the Association is 189,000 members?

Mr. Haas: That's correct. I would call your Honor's attention to the fact that this is the California State Automobile Association, and not the Inter-Insurance Bureau, the petitioner here.

Mr. Lasky: Yes. Now, with that, I have no new evidence to offer, and I am prepared now to proceed to argue the case. It has been fully briefed, but I think it ought to be argued orally. If your Honor would tell me how much time—.

The Court: You may have all the time you want, but don't simply read your brief to me.

Mr. Lasky: I should state the relationship between these parties. The California State Automobile Association was organized in the year 1907. In the year 1914 it created the petitioner, California State Automobile Association Inter-Insurance Bureau. That is what is known as a reciprocal or inter-insurance exchange in this State and what it really is is a group of people entering into insurance [fol. 301] contracts with each other. It is not a legal entity but consists of all those who are insured, each one of which insures all others. They operate through a common attorney in fact. They do not pay premiums but pay a deposit and at the end of the year enough is deducted to cover all losses. Since its organization it has been a fundamental rule of the organization that it would only insure those people who were members of the California State Automobile Association and that is how it has operated ever since it was organized. This statute prescribes that it must insure anybody who is assigned to it by the Assigned Risk Plan promulgated by the Commissioner. We say that violates the due process clause of the Federal Constitution as well as the State Constitution. It not only compels petitioner to enter contracts against its will but compels it to enter into bad contracts. The evidence shows—and I won't go into it—that any risk which comes through the Assigned Risk Plan does so because it is so poor in character that no insurance company will voluntarily accept it.

Now, as your Honor knows, it is a fundamental rule, subject to exceptions in certain cases such as public utilities, that every man has a right to refuse to enter a contract with any one for any reason or for no reason. That has been announced in a case of insurance recently in this State, the case of K. C. Working Chemical Co. vs. Eureka Security Insurance Co., in 82 A. C. A. The Court there said that an insurance company is not bound to accept an [fol. 302] application or proposal for insurance but may reject it for any reason or arbitrarily. And cited in sup-

port of that proposition is the Arizona Frost case where the Arizona court had before it just this kind of a statute and it said it was unconstitutional under the due process clause.

Now, counsel for the Commissioner has contended that insurance is a business affected with a public interest, and, of course, I concede insurance is subject to regulation, so much so it is legitimate to regulate the rates which insurance companies may charge, but to go beyond that and say a person must enter a contract against his will and accept bad risks goes further than the courts permit.

[fol. 303] Mr. Lasky: In the discussion this morning on the constitutionality of this statute with respect to due process, perhaps I did not emphasize the aspects of it I desired to. We do, of course, claim the statute is unconstitutional in requiring an insurer to cover anybody it does not desire to insure, but the point with respect to our petitioner is that it compels us to insure others than members of the California Automobile Association. In other words, our organization was a cooperative organized for the purpose of insuring members of the association and no others, an in cases referring to cooperatives, discussed fully in the brief, that element of the right to confine operations to your own members is dwelt upon.

[fol. 304] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 305] In the District Court of Appeal of the State of California in and for the First Appellate District, Divison One

1 Civil No. 14,078

California State Automobile Association Inter-Insurance Bureau, Appellant,

vs.

Wallace K. Downey, Insurance Commissioner of the State of California, Respondent

Opinion

The Insurance Commissioner of California suspended the right of the California State Automobile Association Inter-Insurance Bureau to transact the automobile liability in-

surance business in this state because of the refusal of the Bureau to subscribe to or participate in the California Automobile Assigned Risk Plan. (Cal. Admin. Code, Title 10, §§ 2400-2498.) This Plan had been approved and promulgated by the Commissioner under the claimed authority of the Assigned Risk Law. (Stats. of 1947, Chap. 1205, p. 2714; §§ 11620-11627 of the Insurance Code.) Pursuant to section 11523 of the Government Code as amended in 1947, the Bureau sought, by mandate, to compel the Commissioner to restore its right to do business. From a judgment denying the petition for this writ the Bureau appeals.

There are no substantial controverted factual issues presented on this appeal. The basic contentions of appellant are that the Assigned Risk Law is unconstitutional and that, as applied to appellant, the Assigned Risk Plan is invalid.

The issues presented are of vital importance to those engaged in the automobile insurance industry, and to various segments of the public. This interest is partially [fol. 306] reflected in the fact that amici curiae briefs have been filed, all in support of respondent, by 81 companies writing automobile insurance in California, another by an attorney representing the California Association of Insurance Agents, the Insurance Brokers Society of Southern California, and The Society of Insurance Brokers, while still another on behalf of The National Association for the Advancement of Colored People. These briefs, as well as the excellent briefs prepared by counsel for both litigants, and the two oral arguments, have been of great assistance to the court in deciding the somewhat complex questions presented.

Background of Appellant

The California State Automobile Association was organized and incorporated in 1907 as a motor club for the purpose of advancing the interests of the motoring public. By the year 1914, many of its members requested that the Association care for their automobile insurance needs. Many members felt that the rates charged by the private companies were high and unsatisfactory. The Association, in the year mentioned, created appellant, the California State Automobile Association Inter-Insurance Bureau, in order to offer to its membership a plan of automobile insurance at a lower cost than the then prevailing rates.

The Bureau is somewhat difficult to classify. It is a reciprocal or inter-insurance exchange. It is open only to members of the Association. Its executive body, called the "Insurance Board" is elected by the Board of Directors of the Association, and is composed of the same number of members as the board of directors of the Association. Participation by the members of the Association is voluntary. Each member desiring to join the Bureau executes a power of attorney to the same agent, authorizing him or it to enter into agreements of insurance. The members act as insurers [fol. 307] of one another. No premiums, as such, are paid. Each member makes an annual deposit which is credited to him. The deposit fund is used to pay losses and expenses, for which purposes a proportionate amount is deducted from the deposit of each member. The operations of such organizations are regulated by sections 1280 to 1530 of the Insurance Code.

In many ways such an organization resembles a mutual insurance corporation. Its basic differences from such an organization are in mechanics of operation and in legal theory, rather than in substance. Appellant asserts that it is not a legal entity, which is undoubtedly technically correct. Obviously, it provides for a form of cooperative insurance by means of a joint venture or limited partnership. For various purposes, the law has treated such an organization as if it were a separate entity. Thus, persons, natural or corporate, holding the powers of attorney must procure a certificate of authority from the Insurance Commissioner (§ 1350, Ins. Code); its finances are minutely regulated (§§ 1370-1375, Ins. Code); it can sue or be sued in its own name (§ 1450, Ins. Code); a member or subscriber cannot be sued on any obligation contained in the power of attorney until a final judgment against the inter-insurance bureau has been unsatisfied for 30 days (§ 1451, Ins. Code); all moneys received from members and not returned are subject to the gross premium tax placed on insurance companies (§ 1530, Ins. Code; Inds Indem. Exch. v. State Bd. Equalization, 26 Cal. 2d 772); and for purposes of liquidation it is an entity (Mitchell v. Pac. Greyhound Lines, 33 Cal. App. 2d 53).

History of the Assigned Risk Law

The tremendous increase in the number of motor vehicles in recent years, the great number of automobile accidents, [fol. 308] the enormous loss to the persons injured where the person at fault is uninsured and unable to respond in damages, and the natural desire of the automobile insurance companies to keep their losses down by limiting their policies to selected risks, have created many problems which the legislatures of many states have studied and attempted to solve. Nearly every state provides for the licensing of drivers, and many for their careful examination to weed out the unfit. Some states have provided for compulsory insurance as a prerequisite to the issuance of a driver's license, while others have provided a form of limited compulsory insurance by requiring certain persons to give proof of financial responsibility before they may secure a license to drive.

The California Legislature has given much thought to this problem. As early as 1929, it adopted a statute providing for the suspension of the license to operate a motor vehicle of certain persons for various reasons, including the failure of a driver or owner to pay a final judgment of $100 or more for personal or property damage arising out of the operation of a motor vehicle. (Stats. of 1929, Chap. 258, § 4, p. 560.) This portion of the statute has been several times amended and has been codified in the Vehicle Code as section 410. The entire act is now found in sections 410 to 420.9 of the Vehicle Code. The act provides that one against whom such a judgment has been secured can lift the suspension only by paying the judgment and establishing his ability to pay claims that may arise from future accidents. Such ability to pay may be established by proof that the person involved is now insured, or he may post a surety bond, or he may deposit $11,000 in cash with the State Treasurer.

Another step in the same direction was taken in 1935. In that year, the City Carriers' Act was adopted. (Stats. of [fol. 309] 1935, Chap. 312, p. 1057.) That act applies to highway carriers operating in any city of the state, and requires such operators to secure liability insurance, or give other evidence of financial responsibility, as a condition prerequisite to securing a permit to operate trucks for hire.

These statutes had one effect that was perhaps not foreseen by the Legislature, and that was that many competent drivers, many of whom depended for a living upon driving a motor vehicle, were prevented from operating motor vehicles because of their inability to secure an insurance policy or to give other proof of their financial responsibility. This was particularly true of a large number of small truck operators to whom insurance companies were reluctant to issue policies and who could not make the $15,000 cash deposit required. Many of these operators were refused insurance not because they were bad drivers, or not because they had a bad accident history or criminal record, but simply because many insurance companies believed that small truck operators, as a class, were a bad risk in view of the unfavorable loss ratios caused by the increasing accident rate, large jury verdicts, etc. Other large groups of drivers who apparently had difficulty in securing or were unable to secure insurance were violators of traffic laws, members of minority groups, particularly the colored drivers, persons with minor physical disabilities, the young and the old drivers, and, of course, those who had bad accident records.

Such a situation created much hardship and many inequities, and various solutions were offered to the Legislature, one of which was that the State go into the insurance business and assume these and other risks. This was a solution opposed and feared by the insurance companies. Faced with these various pressures, in 1942, all insurance companies, handling automobile insurance in California, including appellant, adopted a voluntary "assigned risk" [fol. 310] plan, which provided a method for insuring some, but not all, of the groups that were unable, otherwise, to secure insurance. This plan was approved by the State Insurance Department and became effective July 1, 1942. Under this plan, approved applicants for insurance were allocated to the subscribing insurers in proportion to the amount of automobile insurance written by each subscribing insurer the preceding year. In 1943, the Legislature facilitated the operation of the plan and recognized it by enacting sections 1110 to 1113 of the Insurance Code.

This voluntary plan alleviated, in some degree, the situation created by the statutes of 1929 and 1935, but it was only a partial palliative. It was strictly limited to per-

sons required to procure and maintain insurance in order to operate their automobiles or trucks. Other persons who for one reason or another were deemed greater than ordinary risks by insurers were not covered by the voluntary plan.

Appellant, as already mentioned, was a subscriber to the voluntary plan, but all during the time it participated it adhered, strictly, to its policy of insuring only members of the California State Automobile Association, some of whom were members of the restricted groups. Late in 1946 or early in 1947, appellant withdrew from the plan. This immediately imperilled the soundness of the voluntary plan. One of the largest insurers in the state was refusing to take a share of the assigned risks, thus increasing the proportionate number other insurers were expected to take. The other insurers were reluctant to continue the voluntary plan under such circumstances. In this emergency the Legislature, then in session, promptly acted. It passed, as an emergency measure, the Compulsory Assigned Risk Law (Stats. of 1947, Chap. 39, p. 525) which became effective February 17, 1947. It provided that, after consultation [fol. 311] with insurers writing automobile insurance, the Commissioner shall approve "a reasonable plan for the equitable apportionment among such insurers of applicants for automobile . . . insurance who are in good faith entitled to but are unable to procure such insurance through ordinary methods." Upon the adoption of such a plan "all such insurers shall subscribe thereto and shall participate therein." The Legislature declared the act to be an urgency measure "necessary for the immediate preservation of the public peace, health and safety," and declared the nature of the emergency in the following language:

"Under provisions of the Vehicle Code, certain persons who have been involved in motor vehicle law violations are required to file insurance policies or other evidence of financial responsibility with the State in order to continue lawfully to operate motor vehicles upon the public highways of the State.

"Because insurers are naturally reluctant to grant insurance to such persons, it has been necessary to devise a plan for allocating such risks upon an equitable plan to the insurers engaged in the business. Such a plan, dependent

upon the voluntary consent of all insurers, has been in effect for a number of years, but has recently ceased to operate because of the withdrawal of one of the subscribing insurers.

"Unless this act takes immediate effect, many persons who are insured under the former plan will be deprived of their insurance and those seeking to obtain such insurance will be unable to do so. Both classes will be deprived of the opportunityy to operate motor vehicles upon the public highways, with a consequent loss in earning power in many cases and serious hardship in others; or in the alternative may continue to operate such vehicles in violation of the law, with a resultant increased burden on law enforcement [fol. 312] agencies and a probable increase in disrespect for law."

Present Compulsory Assigned Risk Law.

The above statute was amended by the same legislature that had passed the emergency act (Stats. of 1947, Chap. 1205, p. 2714), by amending section 11620 of the Insurance Code and enacting sections 11621-11627 of that code. It is these statutes, and the plan adopted pursuant thereto, that are attacked by appellant in this proceeding. Section 11620, as then amended, provides in part as follows: "The commissioner, after a public hearing, shall approve or issue a reasonable plan for the equitable apportionment, among insurers admitted to transact liability insurance, of those applicants for automobile bodily injury and property damage liability insurance who are in good faith entitled to but are unable to procure such insurance through ordinary methods. The commissioner may approve or issue reasonable amendments to such plan if he first holds a public hearing to determine whether the amendments are in keeping with the intent and purpose of this section. All such insurers shall subscribe to the plan and its amendments and, subject to Section 11621, participate therein."

Provision is then made in the section for a statutory notice of hearings on the proposed plan. Section 11621, after providing that assignments of risks shall not be made in certain instances not here involved, then states: "In so far as possible, assignments under the plan shall be consistent with the scope of territorial operations and underwriting policies of each subscriber." Section 11622 provides the amount of coverage required, while section 11623 authorizes

the subscribing insurers to "form their own organization which shall, subject to review by the Insurance Commissioner, administer and operate the plan." Section 11624 [fol. 313] provides that the plan adopted pursuant to the statute shall contain:

"(a) Standards for determining eligibility of applicants for insurance, and in establishing such standards the following may be taken into consideration in respect to the applicant . . .

"(1) His criminal conviction record;

"(2) His record of suspension or revocation of a license to operate an automobile;

"(3) His automobile accident record;

"(4) His age and mental, physical and moral characteristics which pertain to his ability to safely and lawfully operate an automobile;

"(5) The condition or use of the automobile.

"(b) Procedures for making application for insurance, for apportionment of eligible applicants among the subscribing insurers and for appeal to the commissioner by persons who believe themselves aggrieved by the operation of the plan,

"(c) Rules and regulations governing the administration and operation of the plan,

"(d) Provisions showing the basis upon which premium charges shall be made and

"(e) Such other provisions as may be necessary to carry out the purpose of this article."

Section 11625 provides that if any insurer fails to subscribe to the Plan, the Commissioner shall give such company ten days' written notice to subscribe. If the insurer still refuses to participate, the Commissioner "may, after hearing upon notice, suspend the certificate of authority of such insurer to transact liability insurance in this State until such insurer does so subscribe." Section 11626 provides for discipline of subscribers who violate the plan, [fol. 314] while section 11627 provides that the term "insurer" includes "reciprocal or interinsurance exchanges."

At the same session of the Legislature that passed this statute there was also passed the Highway Safety Responsibility Law. (Stats. of 1947, Chap. 1235, p. 2738, adding

§§ 419 to 420.9 to the Vehicle Code.) This law provides for the suspension, regardless of fault, of the license of the operator of any motor vehicle involved in an accident within the state in which injury to any person, or property damage in excess of $100 results unless the operator is insured or puts up a cash deposit. This law greatly aggravated the need for an assigned risk plan because it tremendously increased the number of persons required to carry insurance or give other evidence of their financial responsibility.

The Assigned Risk Plan.

The Commissioner, acting pursuant to the provisions of the Assigned Risk Law, held a hearing in October of 1947, on an assigned risk plan proposed by the automobile insurers operating in this state. Appellant appeared at that hearing and attacked the constitutionality of the Assigned Risk Law, but also stated that it would give consideration to accepting the plan voluntarily if the proposed plan were modified so as to give recognition to appellant's policy of insuring only members of the California State Automobile Association. This condition was not acceptable to the Commissioner nor to the committee. The plan was adopted without such a provision, and appellant refused to subscribe to it. The Commissioner, acting pursuant to section 11625 of the Insurance Code, suspended appellant's permit to transact automobile liability insurance in California. The appellant sought to review and annul this order of sus- [fol. 315] pension by means of a petition for writ of mandate filed in the Superior Court. That court denied the petition and appellant has appealed. By stipulation of counsel, and by order of this court, the operation of the suspension order was stayed pending the final determination of the case on appeal. (§ 1094.5f, Code of Civ. Proc.)

Provisions of the Challenged Plan.

Before directly discussing the contentions of appellant, reference should be made to the general provisions of the Assigned Risk Plan. The Plan is to be found in the California Administrative Code, Title 10, sections 2400 to 2498.

The Plan is available to all residents of California and to non-residents using automobiles registered in this state.

(§ 2404.) Policies issued under the Plan shall provide a $5,000-$10,000 coverage. (§ 2406.) The Plan is to be administered by a committee of five elected by the insurers and representing the various types of insurers doing business in this state. (§§ 2421 and 2421.1). The committee appoints a manager who is to be the administrative executive of the Plan and who makes all assignments of risks. (§ 2422.) Applicants "who are in good faith entitled" to insurance but are unable to procure it through ordinary channels, are eligible. (§ 2430.) The same section provides that an applicant shall be deemed to be in good faith entitled to insurance unless he is within certain specified categories. The excluded categories include those who, within three years prior to their application, have been convicted more than once of any of the following offenses:

a. Failing to stop and report when involved in an accident.

b. Manslaughter or negligent homicide resulting from [fol. 316] operation of the vehicle.

c. Theft or unlawful taking of a vehicle.

d. Any felony in which an automobile was used.

e. Driving under the influence of liquor and causing death or bodily injury to another.

f. Driving while licenses are suspended or revoked.

g. Permitting unlawful use of driver's license or any other offense under section 338 of the Vehicle Code (§ 2431.1); or within the same three-year period has been convicted more than twice of:

a. Driving while intoxicated or under the influence of liquor.

b. Driving in a reckless manner where injury to person or property results.

c. Driving at excessive rate of speed where injury to person or property results. (§ 2431.)

It is also provided that other persons not "in good faith entitled" to insurance are:

1. Those addicted to use of drugs. (§ 2431.1a.)

2. Those habitually using alcohol to excess. (§ 2431.2a.)

3. Those failing to disclose serious motor accidents or traffic violations in their applications. (§ 2431.3.)

4. Those found to have operated vehicle more than once while license was suspended or revoked. (§ 2431.3a.)

5. Those with defective automobiles who have failed to repair them at the Committee's demand. (§ 2431.4.)

6. Those who failed to pay insurance premiums on automobile insurance during the past year. (§ 2431.5.)

7. Those with a major mental or physical disability. (§ 2431.5a.)

8. If the risk consists of or includes a vehicle carrying [fol. 317] passengers for compensation. (§ 2431.6.)

9. If the risk consists of a vehicle used in transporting explosives, gasoline or other highly inflammable or explosive materials. (§ 2431.6a.)

10. Those under 18 who cannot show hardship. (§ 2431.7a).

11. Those whose driving would, in the opinion of the Committee, endanger public safety. The entire history of the applicant may be examined in making such a determination. (§ 2431.8.)

Section 2445.1 provides: "Insofar as possible, assignments shall be consistent with the scope of territorial operations and underwriting policies of each insurer, of which the Manager shall have been notified in writing. Underwriting policy is policy founded on underwriting judgment of the hazards involved. Without in any way limiting or enlarging the meaning of the term 'underwriting policy,' policy excluding from insurance an applicant solely by reason of the fact of his non-membership in an organization is not underwriting policy. Underwriting policy excluding from insurance applicants solely by reason of facts or circumstances not sufficient to render them not in good faith entitled, under this Plan, to insurance is inconsistent with the purposes of this Plan and of the statute under which it is approved and issued."

The only other section now necessary to mention is section 2461 which provides that: "If the experience, physical or other condition of any risk assigned under the Plan is such as makes the hazard of the risk greater than that contemplated by : . . [the normal rates] . . . the insurer . . . may charge such rates and minimum premiums as are commensurate with the greater hazard of the risk, subject to the approval of the Committee."

[fol. 318] *Constitutional Arguments of Appellant.*

Appellant directs its main arguments against sections 11620 and 11627 of the Insurance Code, contending that, for various reasons, those sections deny to it due process of law in violation of the Fourteenth Amendment to the United States Constitution. The arguments can be summarized as follows:

It is urged that the insurance business is not a public calling; that while the United States Supreme Court, in German Alliance Ins. Co. v. Lewis, 233 U. S. 389, upheld the regulation of charges made by such companies, that decision is predicated upon the assumption that insurance companies cannot be compelled to make contracts against their will; that the present statute compels appellant to enter into contracts against its will and thus treats appellant, a private business, as if it were a public utility; that although a business may be impressed with a public interest so as to be subject to state regulation, the right thus to regulate does not include the power of the state to compel businesses that have not dedicated their property to the public to enter into contracts against their will. (Allen v. Railroad Commission, 179 Cal. 68, 88, is cited in support of this contention.)

Appellant next argues that, even in the public utility field, one who serves only a limited group cannot be compelled to serve others. In this connection reliance is placed on a line of cases which hold that a private carrier cannot be compelled to accept business, but may refuse service on the basis of convenience. (Forsyth v. San Joaquin Light etc. Corp., 208 Cal. 397; Morel v. Railroad Commission, 11 Cal. 2d 488, and Stephenson v. Binford, 287 U. S. 251, are typical of the cases cited to support this argument.) It is then argued that, even if the insurance business were subject to [fol. 319] the same degree of control as a public utility, appellant cannot be compelled to accept non-member risks because appellant has heretofore restricted its operations to contracting only with members of the California State Automobile Association. Thus, it is contended, appellant is not a public insurer, and cannot be compelled to serve others. The power to regulate does not include the power to compel a company to furnish service. Such cases as Associated etc. Co. v. Railroad Commission, 176 Cal. 518; Allen v. Railroad Commission, 179 Cal. 68; Frost v. Railroad Commission, 197

Cal. 230, reversed in 271 U. S. 583; Morel v. Railroad Commission, 11 Cal. 2d 488; Cudahy Packing Co. v. Johnson, 12 Cal. 2d 583; Trask v. Moore, 24 Cal. 2d 365; Ocean Park etc. Corp. v. Santa Monica, 40 Cal. App. 2d 76, and others (see, also, note 175 A. L. R. 1333), are relied upon as establishing the principle that a statute which subjects a contract carrier to the burdens of a public utility violates the due process clause. This principle is peculiarly applicable to cooperatives, according to appellant, it being contended that a cooperative cannot be regulated like a public utility. (Frost v. Railroad Commission, 271 U. S. 583; Hissem v. Guran (Ohio), 146 N. E. 808; State v. Nelson (Utah), 238 Pac. 237; Garkane Power Co. v. Public Service Commission (Utah), 100 Pac. 2d 571, are cited in support of this proposition.)

It is next urged that the fact that a license is required does not give the State the power to deny to appellant the privilege of doing business or exacting an improper price for its approval. (Frost v. Railroad Commission, *supra;* Danskin v. San Diego Unified Sch. Dist., 28 Cal. 2d 536; Union Pacific R. R. Corp. v. Commission, 248 U. S. 67, are supported as establishing this proposition.)

Finally, it is argued that the Plan is not essential to the Financial Responsibility Law; that it forces the members of the Association to pay for injuries caused by non-mem- [fol. 320] ber drivers who are bad risks, and that, in effect, the Plan constitutes an attack on a non-profit cooperative by its competitors. For these and other reasons appellant urges that the Plan violates its constitutional rights.

Discussion of the Constitutional Arguments.

Most of the cases cited by appellant deal only with the application of general rules to the particular facts there involved, and are applicable here, if at all, only indirectly by way of analogy. Appellant does, however, cite one case that contains language that directly upholds its position. That case is Employer's Liability Assur. Corporation v. Frost, 62 Pac. 2d 320, decided in 1936, by the Arizona Supreme Court. (An annotation on the case is to be found in 107 A. L. R. 1421, and a supplementary annotation in 123 A. L. R. 139.) The Frost case involved a state statute which compelled insurance companies writing workmen's compensation insurance to accept all applications, and to waive

the right to investigate and inform itself of the risks and hazards incident thereto. The court, among other things, held that the statute violated the freedom to contract right guaranteed by the Fourteenth Amendment. The court pointed out that (p. 324): "The courts have gone far in upholding the right of the state to regulate and control insurance business within its boundaries, but we have found no case where the facts, as here, call for a decision upon the power of the Legislature to make it mandatory upon an insurance company qualifying under its laws to carry a certain kind of insurance to insure all risks of that kind for which application may be made to it which are not prohibited by law." This case is contrary to the decisions of the Supreme Court of Massachusetts, and of the Supreme Court of Texas, decisions which had been rendered when the Arizona court decided its case in 1936, but which are not referred to by it. (See In re Opinion of the Justices (Mass.—1925), 251 Mass. 569, 147 N. E. 681; Harris v. [fol. 321] Traders' & General Ins. Co. (Texas—1935), 82 S. W. 2d 750; Texas Employers' Inc. Ass'n v. U. S. Torpedo Co. (Texas—1928), 8 S. W. 2d 266, aff. in 1930 in 26 S. W. 2d 1057; see, also, the later Massachusetts case of Factory Mut. Liability Ins. Co. v. Justices of S. Court (1938), 16 N. E. 2d 38, and the later, 1939, Texas case of Federal Underwriters Exchange v. Walker, 134 S. W. 2d 388.) Several of these cases will be discussed later.

The Arizona Supreme Court, as an alternative ground for its decision, pointed out that the Arizona State Compensation Insurance Fund was allowed, but not compelled, to accept insurance from employers. After quoting the pertinent portion of the statute so providing the Court stated (p. 323): "This language is permissive and not mandatory. The provisions of section 1422, however, leave to insurance companies no alternative; they must write all applications. There is no reason, real or apparent, for this provision unless it be that it was put into the law as a deterrent to private insurance companies to enter the field of compensation insurance in competition with the state compensation fund. If that was the motive, the law should have prohibited insurance companies from selling compensation insurance in Arizona and not undertaken to compel them to insure all applications regardless of the hazards." This ground of the decision is undoubtedly sound; the freedom of contract argument is not.

The difficulty with appellant's argument, and with the Arizona case, is that they disregard or treat cavalierly, most of the relatively recent constitutional law cases dealing with the subject of the police power, and rely upon the earlier cases containing a very restricted viewpoint of the State's police power. Thus, many of the principles discussed in Frost v. Railroad Commission, 271 U. S. 583, and Michi-[fol. 322] gan Commission v. Duke, 266 U. S. 570, relied upon by appellant, which cases held that a contract carrier could not be subjected to the burdens imposed on a public utility, were drastically modified as early as 1932 in Stephenson v. Binford, 287 U. S. 251. That case, and those following it, have held that if the business is affected with a public interest (and the insurance business is—German Alliance Ins. Co. v. Lewis, 233 U. S. 389), the validity of the regulation depends primarily upon whether the challenged legislation is reasonably appropriate to the ends sought to be attained.

Starting in 1934, with the case of Nebbia v. New York, 291 U. S. 502, there has been a marked development and advance in the attitude of the United States Supreme Court towards regulatory legislation. That case held that the State of New York could, by statute, fix the minimum and maximum sales prices of milk in that state. Nebbia argued that such a statute violated the due process and equal protection clauses of the Fourteenth Amendment. Some of the comments of Mr. Justice Roberts, the author of the majority opinion, are peculiarly applicable to the present case. Thus, at p. 523 it is stated: "Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest."

And at p. 525: "The Fifth Amendment, . . . and the Fourteenth, . . . do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be ac-[fol. 323] complished by methods consistent with due process. And the guaranty of due process, as has often been

held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be obtained. It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts."

And at p. 527: "The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases. Certain kinds of business may be prohibited; and the right to conduct a business, or to pursue a calling, may be conditioned . . . And statutes prescribing the terms upon which those conducting certain businesses may contract, or imposing terms if they do enter into agreements, are within the state's competency."

Nebbia argued that the milk industry was not a public utility, and that the public power over rates could be validly exercised only over business affected with a public interest—that is, according to Nebbia, only over public utilities. The court conceded that the milk industry was not a public utility, but held that it was a business affected with a public interest and therefore subject to regulation. Quoting from Munn v. Illinois, 94 U. S. 113, the Court (p. 533) held that: "'Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large.'" On the same page this thought was expressed: "Thus understood, 'affected with a public interest' is the equivalent of 'subject to the exercise of the police power'; and it is plain that nothing more was intended by the expression." Still referring to the Munn case, the [fol. 324] Court continued the discussion as follows (p. 533):

"In the further discussion of the principle it is said that when one devotes his property to a use, 'in which the public has an interest,' he in effect 'grants to the public an interest in that use' and must submit to be controlled for the common good. The conclusion is that if Munn and Scott wished to avoid having their business regulated they should not have embarked their property in an industry which is subject to regulation in the public interest.

"The true interpretation of the court's language [in Munn v. Illinois] is claimed to be that only property voluntarily devoted to a known public use is subject to regulation;

as to rates. But obviously Munn and Scott had not voluntarily dedicated their business to a public use. They intended only to conduct it as private citizens, and they insisted that they had done nothing which gave the public an interest in their transactions or conferred any right of regulation. The statement that one has dedicated his property to a public use is, therefore, merely another way of saying that if one embarks in a business which public interest demands shall be regulated, he must know regulation will ensue."

In further discussing this subject, the Court directly discussed the insurance business. It pointed out that, because of the great need for insurance protection, and because competing insurers had agreed upon a fixed schedule of rates, the court had upheld, in German Alliance Insurance Co. v. Lewis, 233 U. S. 389, a statute fixing the premium rates on fire insurance. Still referring, by analogy, to the field of insurance, the Court, at p. 535, stated: "Many other decisions show that the private character of a business does not necessarily remove it from the realm of regulation of charges or prices. . . . Insurance agents' compensation [fol. 325] may be regulated, though their contracts are private, because the business of insurance is considered one properly subject to public control."

And at p. 536 it stated: "It is clear that there is no closed class or category of businesses affected with a public interest, and the function of courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory. . . . The phrase 'affected with a public interest' can, in the nature of things, mean no more than that an industry, for adequate reason, is subject to control for the public good. . . . These decisions must rest, finally, upon the basis that the requirements of due process were not met because the laws were found arbitrary in their operation and effect. But there can be no doubt that upon proper occasion and by appropriate measures the state may regulate a business in any of its aspects, including the prices to be charged for the products or commodities it sells.

"So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a

state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose. The courts are without authority either to declare such policy, or, when it is declared by the legislature, to override it. If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders a court *functus officio*. 'Whether the free operation of the normal laws of competition is a wise and wholesome rule [fol. 326] for trade and commerce is an economic question which this court need not consider or determine.' Northern Securities Co. v. United States, 193 U. S. 197, 337-8. And it is equally clear that if the legislative policy be to curb unrestrained and harmful competition by measures which are not arbitrary or discriminatory it does not lie with the courts to determine that the rule is unwise. With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal."

The Nebbia case has been frequently cited with approval, and its doctrine of state power over business and industry steadily expanded. Whenever a state determines, in good faith, that a practice of an industry is injurious to the public, the state may control the practice even where the legislation directly affects the internal affairs of a business or industry, as long as the legislation is neither arbitrary nor discriminatory. A few citations and examples will serve to illustrate the extent of this control.

In Lincoln Federal Labor Un. v. Northwestern I. & M. Co., 335 U. S. 525, 536, the Court stated: "This Court beginning at least as early as 1934, when the Nebbia case was decided, has steadily rejected the due process philosophy enunciated in the Adair-Coppage line of cases [208 U. S. 161]. In doing so it has consciously returned closer and closer to the earlier constitutional principle that states have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or of some valid federal law. [Citing cases.] Under this constitutional doctrine the due process clause is [fol. 327] no longer to be so broadly construed that the Congress and state legislatures are put in a strait jacket when

they attempt to suppress business and industrial conditions which they regard as offensive to the public welfare."

In West Coast Hotel Co. v. Parrish, 300 U. S. 379, the court upheld the constitutionality of the state of Washington's minimum wage law for women and minors. The court reiterated the principle that freedom of contract is a qualified and not an absolute right, and again stated that the test of unconstitutionality was whether the legislation was arbitrary or capricious, "that is all we have to decide." (P. 399.)

In Osborn v. Ozlin, 310 U. S. 53, the court upheld the constitutionality of a Virginia sta--te which provided that insurance companies doing a casualty and risk business within the state must handle such insurance "through regularly constituted and registered resident agents or agencies of such companies," and that such resident agents should receive the usual commissions and could not share more than one-half of a commission with a non-resident licensed broker. Speaking of the power which the state has over the regulation of insurance companies, the Court said (p. 65): "It is not our province to measure the social advantage to Virginia of regulating the conduct of insurance companies within her borders insofar as it affects Virginia risks. Government has always had a special relation to insurance. The ways of safeguarding against the untoward manifestations of nature and other vicissitudes of life have long been withdrawn from the benefits and caprices of free competition. The state may fix insurance rates, . . . it may regulate the compensation of agents, . . . it may curtail drastically the area of free contract. . . . States have controlled the expenses of insurance companies. They have also promoted insurance [fol. 328] through savings banks. . . . In the light of all these exertions of state power it does noe seem possible to doubt that the state could, if it chose, go into the insurance business, just as it can operate warehouses, flour mills, and other business ventures, . . . or might take 'the whole business of banking under its control.' . . . If the state, as to local risks, could thus preempt the field of insurance for itself, it may stay its intervention short of such a drastic step by insisting that its own residents shall have a share in devising and safeguarding protection against its local hazards. . . . All these are questions of policy not for us to judge. For it can never be emphasized too

much that one's own opinion as to the wisdom of a law must be wholly excluded when one is doing one's judicial duty. The limit of our inquiry is reached when we conclude that Virginia has exerted its powers as to matters within the bounds of her control."

A case peculiarly applicable here is Hoopeston Co. v. Cullen, 318 U. S. 313. There the issue before the court was whether appellant reciprocal insurance associations (insurers against fire and other related risks) whose attorneys in fact were located in Illinois, could constitutionally be made subject to the laws of New York as a condition of insuring property in that state. After holding that New York had the power to regulate these companies, the court considered the question of whether the particular regulations objected to by the appellants were in violation of the due process clause. Particularly objected to by the appellants was a prohibition against making new agreements with subscribers who did not have assets in excess of ten thousand dollars. The Court said (p. 321): "The appellants earnestly insist that theirs is a successful system of cooperative insurance which gives complete security with substantial economy to their members, and that their New York subscribers may lose the benefits of this form of [fol. 329] insurance by reason of the reciprocals' inability to comply with the requirements of the New York law. That the reciprocals save for their members from 25 to 50 per cent of the cost of ordinary commercial insurance and that the members are well satisfied with the system they have created is not controverted by counsel for the state of New York. However persuasive such arguments might be if addressed to the state legislature, they present no constitutional barrier which prevents New York from enforcing these regulations if it chooses." (See, also, Insurance Co. v. Glidden Co., 284 U. S. 151.)

In California, it has been held that: "It is settled law of California that the business of insurance is one affected with a public interest." (Caminetti v. State Mut. Life Ins. Co., 52 Cal. App. 2d 321, 324.) In that case the appellate court affirmed an order of the lower court refusing to vacate an order appointing the Commissioner as conservator for a mutual insurance company where the evidence showed that the payment of a $1,000 monthly salary to the executive vice-president was hazardous to the company.

Many other cases could be cited, but these are sufficient to illustrate the trend of decisions. The above cases deal with general principles, and not with the specific problem here involved. But we are not without authority—state authority it is true—on the precise question. Massachusetts enacted a compulsory automobile insurance law requiring all drivers to be licensed, and all licensed drivers to give security for civil liability growing out of the operation of motor vehicles. One form of approved security was a liability insurance policy. The statute, in detail, provided for the form of such policies by requiring them to contain certain provisions and prohibited others, and also regulated premiums. The statute also provided that if any appel- [fol. 336] lant was refused a policy, or if his policy was canceled, he could apply to a statutory board of appeal which was authorized to determine if such refusal or cancellation was "reasonable," and whether the applicant was a "proper person" to whom a policy should be issued. If the board of appeal decided in favor of the applicant, the insurance company was required to issue a policy, and, upon refusal, its license to do business was to be suspended. In an advisory opinion to the Legislature—Opinion of the Justices, 251 Mass. 569—the Supreme Judicial Court of Massachusetts held that the statute, in all respects, was constitutional. After holding that the business of automobile liability insurance affected the public interest, and after upholding the compulsory provisions of the act including the provisions relating to the content of the policies and the regulation of charges, etc., the Court upheld the provision requiring insurance companies to issue policies to applicants found reasonably entitled to insurance by the board of appeals. At p. 613 the Court discussed this problem as follows: "The several features of the proposed bill set forth in the eighth question as provisos constitute serious limitations upon customary methods of conducting the insurance business. The question whether a particular risk shall be assumed by an insurer or surety is an important factor in the conduct of such business. . . . Character, physical capacity, sight, hearing, financial responsibility, record of past conduct, personal habits, nature and extent of business and general reputation are among the elements of essential significance in determining whether motor vehicle liability bonding or insurance for any particular applicant shall be undertaken. To subject the deter-

mination of such a vital question by an insurer or surety to review is a great interference with freedom of contract. The right to freedom of contract is secured as a general [fol. 331] rule by the constitutions of the Commonwealth and Nation; but there are exceptions where legislative interference with that right is permissible. We are of opinion that the proposed bill in this aspect does not transcend legislative power. The right of the citizen to register a motor vehicle whereby he may travel upon the ways is made strictly conditional upon his depositing cash or securities or upon procuring a motor vehicle liability policy or bond. This, too, is a great interference with freedom of action. The refusal by corporations to issue such policy or sign such bond may drive one out of business or seriously impair his convenience. Where such paramount interests are at stake with sole reference to the use of public ways provided wholly at the expense of the government, there is constitutional basis for legislative regulation to the end that no injustice may be done. Unwarranted discrimination may arise against certain applicants. Instances may arise of honest difference of opinion whether a policy or bond ought to be issued at all, or whether, after issuance, it ought to be cancelled. To provide an impartial administrative tribunal to settle such controversies, although going to the verge of power, cannot in our opinion be pronounced in excess of the authority conferred by the Constitution upon the General Court."

In Factory Mut. Liability Ins. Co. v. Justices of S. Court (Mass.), 16 N. E. 2d 38, in a contested case, the highest court of Massachusetts upheld an order of the board of appeal ordering the insurance company to issue a policy to an applicant who had been refused a policy. There is some language in the opinion particularly applicable here. At p. 40 the Court stated:

"When our Legislature enacted the compulsory motor vehicle insurance law, by which all persons registering [fol. 332] motor vehicles are required to provide security for the payment of claims for damages arising from their operation on the public ways, it foresaw the necessity for providing at the same time a procedure under which individuals could compel companies engaging in the business to insure them in the absence of sound reasons for refusal. . . .

". . . Nor can a company limit the power of the board and the court to determine whether a refusal is proper and reasonable under all the circumstances by insistence upon answers deemed by it to be satisfactory to such questions as it may see fit to include in an application blank. *And it is plain that no company attempting to engage in this business can take the position that it will insure only pleasure vehicles or limit its operations to that part of the field in which there is the least risk and the most profit.* The compulsory law contemplates, and its successful operation requires, that as to their obligations to issue policies all companies alike should abide by the orders of the board or of the court." (Italics added.)

A similar statute has been upheld in Texas. (Harris v. Traders' & General Ins. Co., 82 S.W. 2d 750; Texas Employers' Ins. Ass'n. v. U. S. Torpedo Co., 8 S.W. 2d 266, aff. in 26 S.W. 2d 1057; Federal Underwriters Exchange v. Walker, 134 S.W. 2d 388.)

No further reference to the authorities need be made on this phase of the case. The insurance business is one affected with a public interest, and subject to regulation. As long as the statute has a reasonable relation to a proper legislative purpose, and is neither arbitrary nor discriminatory, it is a valid enactment and cannot be successfully challenged under the due process clause of the federal Constitution. That a valid legislative purpose here existed is too clear to require extended discussion. For the protec- [fol. 333] tion of persons using the highways, the Legislature determined that certain drivers of motor vehicles had to be insured, or give security. Many in these affected groups could not secure a policy or give security. Their means of livelihood, in many cases, was jeopardized. Their right to use the highways was greatly limited. Some means whereby applicants in good faith entitled to insurance could get it, had to be provided. This could be done either by the State going into the insurance business, or by an assigned risk plan affecting all insurers. The Legislature determined to adopt the latter alternative. The Legislature also determined that such a plan could not operate successfully unless all companies writing liability policies were required to take their share of assigned risks. Otherwise, as pointed out by the Massachusetts court, *supra*, one company could select its risks, and thus gain what the Legislature has

determined to be an unfair advantage over its competitors. Unless appellant is required to assume its share of the assigned risks on penalty of losing its license, it will gain an unfair advantage over its competitors. This is a phase of the insurance business clearly subject to regulation. No company can be compelled to assume a risk. But if it refuses to accept an assigned risk, its right to do business in this state may be terminated. The cases heretofore cited clearly establish that the due process clause is no impediment to such a statute. The State's police powers clearly encompass such regulation.

The argument that such legislation compels appellant to enter ito contracts of insurance against its will, and thus impairs appellant's constitutional right to freedom of contract, and destroys one of the essential elements of a contract—consent—has been fully answered in the cases cited above. The State has said that insurance companies that [fol. 334] enter the liability field cannot limit their activities to the most profitable type of business, but must share proportionately the less profitable policies. This infringement on the freedom of contract is justifiable, for reasons already stated. The Plan has a reasonable relation to a valid legislative purpose. It is not arbitrary, capricious, or discriminatory. There is therefore no violation of the due process clause.

Appellant, in the briefs and oral arguments, has laid much stress on the contention that, as applied to appellant, the statute compels it to render a service beyond the scope of its claimed dedication to the public service. The argument is fallacious. It is based on the theory that heretofore it has limited its policies to members of the California State Automobile Association, a select group. If appellant has "dedicated" its business to the public service, it has dedicated it to the writing of automobile liability insurance. The extent of its "dedication" cannot be measured by its past customs or practices, but must be measured by the extent of its powers under the law. While appellant has heretofore only insured a select group, that does not mean that appellant has "dedicated" its business to that group. Under the law (Ins. Code, § 108) this company has the legal right to write automobile liability insurance on a statewide basis and for all applicants. That is the real extent of its "dedication".

Nor does the plan give the competitors of appellant any unfair advantage—in fact, to exclude appellant from the plan would be to give it a most unfair advantage over other companies. Appellant writes an appreciable proportion of the automobile liability insurance written in this state. To permit it to select its risks, and to deny that right to its competitors would be most unfair. The right of the [fol. 335] State to regulate a mutual or reciprocal insurance company, and to compel such companies to abide by reasonable regulations applicable to all, is too clear to require further discussion. That is not discrimination—it is applying the rule of uniformity.

Delegation of Legislative Authority to the Commissioner.

The second major contention of appellant is that the statute is invalid because it fails to provide an adequate yardstick for the guidance of the Commissioner, and thus unlawfully delegates to him legislative powers. There can be no doubt that it is the law that a valid statute cannot delegate unlimited powers to an administrative officer and that, to be valid, the statute must " 'provide an adequate yardstick for the guidance of the executive or administrative body or officer empowered to execute the law.' " (Blatz Brewing Co. v. Collins, 69 Cal. App. 2d 639, 645, quoting from 11 Am. Jur. 955, § 240; see, also, Am. Distilling Co. v. St. Bd. of Equalization, 55 Cal. App. 2d 799; also see 24 Cal. L. Rev. 184; 23 Cal. L. Rev. 435; 8 So. Cal. L. Rev. 226, 255; 29 Cal. L. Rev. 110, 120.) It is this principle appellant seeks to here invoke.

The theory of appellant is that, under the statute, the Commissioner is free to determine, at his arbitrary will, what types of applicants insurers will be compelled to insure, and what types they may refuse to insure. It will be remembered that § 11620 of the Insurance Code requires the Commissioner to "approve or issue a reasonable plan for the equitable apportionment . . . of those applicants for automobile bodily injury and property damage liability insurance who are in good faith entitled to but are unable to procure such insurance through ordinary methods." Section 11621 requires assignments under the plan "In so [fol. 336] far as possible" to be "consistent with the scope of territorial operations and underwriting policies of each subscriber." Section 11624 requires the plan to contain

"Standards for determining eligibility of applicants for insurance," and provides that the Commissioner in establishing such standards "may" take into consideration five specified factors.

It is the basis of appellant's argument on this point that these statutes limit the Commissioner in making assignments only to those "in good faith entitled," and that such words, in fact and in law, place no limitation at all upon the powers of the Commissioner. It is claimed that section 11624 constitutes no limitation on the Commissioner because its provisions are permissive and not mandatory. Such a statute provides no standard at all on the power of the Commissioner, and constitutes an unlawful delegation of legislative power, according to appellant. Reliance is placed on such cases as Panama Refining Co. v. Ryan, 293 U. S. 388; Schechter Corp. v. United States, 295 U. S. 495; State v. Hines (Kan.), 182 Pac. 2d 865.

The rule that the statute must provide a yardstick to define the powers of the executive or administrative officer is easy to state but rather hard to apply. Probably the best that can be done is to state that the yardstick must be as definite as the exigencies of the particular problem permit.

The cases cited by appellant set out a pretty rigid standard. Very broad language can be found in them, but such language must be read in connection with the particular problem under discussion. There are several cases decided by the United States Supreme Court, more recent than those cited by appellant, where the problem is exhaustively discussed and where the principles to be applied are set [fol. 337] forth at length. One such case is Lichter v. United States, 334 U. S. 742, where the court upheld the constitutionality of the Re-negotiation Act. Under attack on the ground of unconstitutional delegation of legislative powers to administrative officers, was the section of the statute which provided that cabinet secretaries could re-negotiate contracts under which "excessive profits" had been or would be realized, and further allowed the Secretary to recover "excessive profits" paid to contractors under the re-negotiated contracts. No definition of "excessive profits" was contained in the statute. The court held that the phrase "excessive profits" constituted a sufficient yardstick in view of its context, and because of the administrative practices later incorporated into the act, and the nature

of the war power there being employed. Certainly, such a standard is far less definite than the one here employed. In discussing standards upheld in other cases the Court stated (p. 786):

"The following, somewhat comparable, legislative specifications are among those which have been held to state a sufficiently definite standard for administrative action:

"'Just and reasonable' rates for sales of natural gas, . . .' 'public interest, convenience, or necessity' in establishing rules and regulations under the Federal Communications Act, . . .; prices yielding a 'fair return' or the 'fair value' of property, . . .; 'unfair methods of competition' distinct from offenses defined under the common law, . . .; 'just and reasonable' rates for the services of commission men, . . .' and 'fair and reasonable' rent for premises, with final determination in the courts, . . ."

Another leading case is Yakus v. United States, 321 U. S. 414, in which the court held that there was no unconstitu- [fol. 338] tional delegation of power by Congress to the Price Administrator in the Emergency Price Control Act of 1942. Section 1(a) described the general purpose of the Act. By section 2(a), the Administrator was authorized to promulgate regulations fixing prices of commodities which "in his judgment will be generally fair and equitable and will effectuate the purposes of this Act" when in his judgment, their prices "have risen or threaten to rise to an extent or in a manner inconsistent with the purposes of this Act." The section also provided that "so far as practicable . . . the Administrator shall ascertain and give due consideration to the prices prevailing between October 1 and October 15, 1941 . . . and shall make adjustments for such relevant factors as he may determine and deem to be of general applicability, . . ."

The statute was upheld as providing a sufficient standard. There is much stated in the opinion that is here applicable. At p. 423 the Court stated:

"Congress enacted the Emergency Price Control Act in pursuance of a defined policy and required that the prices fixed by the Administrator should further that policy and conform to standards prescribed by the Act. The bound-

aries of the field of the Administrator's permissible action are marked by the statute. It directs that the prices fixed shall effectuate the declared policy of the Act to stabilize commodity prices so as to prevent wartime inflation and its enumerated disruptive causes and effects. In addition the prices established must be fair and equitable, and in fixing them the Administrator is directed to give due consideration, so far as practicable, to prevailing prices during the designated base period, with prescribed administrative adjustments to compensate for enumerated disturbing factors affecting prices. In short the purposes of the Act [fol. 339] specified in §1 denote the objective to be sought by the Administrator in fixing prices—the prevention of inflation and its enumerated consequences. The standards set out in § 2 define the boundaries within which prices having that purpose must be fixed. It is enough to satisfy the statutory requirements that the Administrator finds that the prices fixed will tend to achieve that objective and will conform to those standards, and that the courts in an appropriate proceeding can see that substantial basis for those findings is not wanting.

"The Act is thus an exercise by Congress of its legislative power. In it Congress has stated the legislative objective, has prescribed the method of achieving that objective—maximum price fixing—, and has laid down standards to guide the administrative determination of both the occasions for the exercise of the price-fixing power, and the particular prices to be established." After distinguishing the Schechter case the Court stated (p. 424):

"The Constitution as a continuously operative charter of government does not demand the impossible or the impracticable. It does not require that Congress find for itself every fact upon which it desires to base legislative action or that it make for itself detailed determinations which it has declared to be prerequisite to the application of the legislative policy to particular facts and circumstances impossible for Congress itself properly to investigate. The essentials of the legislative function are the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct—here the rule, with penal sanctions, that prices shall not be greater than those fixed by maximum price regulations which conform to standards and will tend to further the policy which Con-

[fol. 340] gress has established. These essentials are preserved when Congress has specified the basic conditions of fact upon whose existence or occurrence, ascertained from relevant data by a designated administrative agency, it directs that its statutory command shall be effective. It is no objection that the determination of facts and the inferences to be drawn from them in the light of the statutory standards and declaration of policy call for the exercise of judgment, and for the formulation of subsidiary administrative policy within the prescribed statutory framework. . . .

"Nor does the doctrine of separation of powers deny to Congress power to direct that an administrative officer properly designated for that purpose have ample latitude within which he is to ascertain the conditions which Congress has made prerequisite to the operation of its legislative command. Acting within its constitutional power to fix prices it is for Congress to say whether the data on the basis of which prices are to be fixed are to be confined within a narrow or a broad range. In either case the only concern of courts is to ascertain whether the will of Congress has been obeyed. This depends not upon the breadth of the definition of the facts or conditions which the administrative officer is to find but upon the determination whether the definition sufficiently marks the field within which the Administrator is to act so that it may be known whether he has kept within it in compliance with the legislative will."

At page 426 appears the following pertinent illustrations:

"The authority to fix prices only when prices have risen or threaten to rise to an extent or in a manner inconsistent with the purpose of the Act to prevent inflation is no broader than the authority to fix maximum prices when deemed necessary to protect consumers against unreasonably high prices, sustained in Sunshine Anthracite Coal Co. v. Adkins, [fol. 341] *supra*, or the authority to take possession of and operate telegraph lines whenever deemed necessary for the national security or defense, upheld in Dakota Central Tel. Co. v. South Dakota, 250 U. S. 163; or the authority to suspend tariff provisions upon findings that the duties imposed by a foreign state are 'reciprocally unequal and unreasonable,' held valid in Field v. Clark, *supra*." Other powers mentioned by the court as within the constitutional

limitation are set forth on p. 427 as follows: ". . . the power to approve consolidations in the 'public interest,' . . .; or the power to regulate radio stations engaged in chain broadcasting 'as public interest, convenience or necessity requires,' . . .; or the power to prohibit 'unfair methods of competition' not defined or forbidden by the common law, Federal Trade Commission v. Keppel & Bro., 291 U. S. 304; . . .; or the similar direction that in adjusting tariffs to meet differences in costs of production the President 'take into consideration' 'in so far as he finds it practicable' a variety of economic matters, sustained in Hampton & Co. v. United States, *supra;* or the similar authority, in making classifications within an industry, to consider various named and unnamed 'relevant factors' and determine the respective weights attributable to each, held valid in Opp Cotton Mills v. Administrator, *supra.*"

The United States Supreme Court has also commented on this problem in American Power Co. v. S. E. C., 329 U. S. 90. The problem there involved and its solution are disclosed in the following quotation (p. 104):

"Section 11(b)(2) itself provides that the Commission shall act so as to ensure that the corporate structure or continued existence of any company in a particular holding company system does not 'unduly or unnecessarily complicate the structure' or 'unfairly or inequitably distribute [fol. 342] voting power among security holders.'" The objection that this was an insufficient standard was rejected.

At p. 105 the Court stated: ". . . These standards are certainly no less definite in nature than those speaking in other contexts in terms of 'public interest,' 'just and reasonable rates,' 'unfair methods of competition' or 'relevant factors.' The approval which this Court has given in the past to those standards thus compels the sanctioning of the ones in issue. . . .

"The judicial approval accorded these 'broad' standards for administrative action is a reflection of the necessities of modern legislation dealing with complex economic and social problems. . . . The legislative process would frequently bog down if Congress were constitutionally required to appraise beforehand the myriad situations to which it wishes a particular policy to be applied and to formulate

specific rules for each situation. Necessity therefore fixes a point beyond which it is unreasonable and impracticable to compel Congress to prescribe detailed rules; it then becomes constitutionally sufficient if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority. Private rights are protected by access to the courts to test the application of the policy in the light of these legislative declarations."

Enough has been quoted to illustrate how similar problems have been handled by the highest court. It is clear that the fact that the Commissioner has some discretion, is no valid constitutional objection to the statute. It is also clear that the Assigned Risk Law does not have to be considered in a vacuum. Other states *in pari materia* may, of course, be considered. The original Assigned Risk Law with its urgency clause, may be looked to in order to ascer- [fol. 343] tain the legislative purpose. So too, we may properly consider the various statutes requiring insurance or security from certain automobile drivers. The background of the present statute, the problem it was designed to meet, the voluntary plan, its breakdown, all serve to give meaning and substance to the provisions of the statute under consideration. Thus, when section 11620 of the Insurance Code declares that it is the policy of the law to allow the Commissioner to issue a plan for the equitable apportionment of applicants in good faith entitled to insurance, the statute does not stand alone but must be considered in connection with its object and its background. If the statute was to be effective, great discretion had to be left to the Commissioner to meet the various and complex problems with which he was to be presented. Rigid standards were not reasonably practicable. While the statute must furnish the administrator with a yardstick, it need not furnish a micrometer. The policy of the statute is clear. In our opinion, the yardstick furnished complies with constitutional requirements.

Does the Plan Violate the Statute?

The next contention of appellant is that, if it be assumed that the statute is valid, the Plan actually adopted violates the provisions of the statute and is therefore void.

The appellant attacks the Plan in several minor and one major respect. The first minor attack is against various provisions of the Plan on the ground that certain distinctions made therein are arbitrary or discriminatory. None of these alleged discriminations operates against appellant. It is elementary that only a member of the class discriminated against can attack the constitutionality of a plan on the charge of unconstitutional discrimination.

[fol. 344] Another minor objection to the Plan is the claim that it overlooks consideration of the record of applicants with respect to suspension or revocation of drivers' licenses. (Ins. Code, § 11624(a) (2).) However, appellant has apparently overlooked sections 2431.8 and 2431.8a of the Plan, which provide that the application may be refused if the accident and conviction records are such that his operation of an automobile would endanger public safety, or if, on the basis of a thorough investigation of the applicant's record, reasonable doubt exists as to whether the applicant should be permitted to continue driving.

The main attack against the Plan is based on the last sentence of section 11621 of the Insurance Code which reads as follows: "In so far as possible, assignments under the plan shall be consistent with the scope of territorial operations and underwriting policies of each subscriber."

The Plan provides (§ 2445.1) that "In so far as possible, assignments shall be consistent with the scope of territorial operations and underwriting policies of each insurer, of which the Manager shall have been notified in writing. Underwriting policy is policy founded on underwriting judgment of the hazards involved. Without in any way limiting or enlarging the meaning of the term 'underwriting policy,' policy excluding from insurance an applicant solely by reason of the fact of his non-membership in an organization is not underwriting policy. Underwriting policy excluding from insurance applicants solely by reason of facts or circumstances not sufficient to render them not in good faith entitled, under this Plan, to insurance is inconsistent with the purposes of this Plan and of the statute under which it is approved and issued." Appellant argues at length that this provision of the Plan is invalid, indefinite and irrational. The argument, omitting certain technical [fol. 345] attacks on the provision, none of which is sound,

amounts to this—Section 11621 of the Insurance Code requires that any plan adopted shall "In so far as possible" be consistent with the underwriting policies of the insurer. The policy of insuring only members of the California State Automobile Association is an underwriting policy of appellant. The Plan (§ 2445.1) declares this not to be an "underwriting policy." The Plan therefore violates the statute.

The obvious answer to appellant's argument is that all "underwriting policies" of an insurer do not have to be given recognition by the Plan. Section 11621 of the Insurance Code does not compel the Commissioner to embody all such underwriting policies into the Plan. The language is "In so far as possible" such underwriting policies shall be considered in making assignments. If it be assumed that a policy or practice of writing insurance only for members of the Association is an "underwriting policy," such policy is directly opposed to the purpose, intent and spirit of the statute. Certainly, section 11621 does not require the Commissioner to embody into the Plan a policy of a particular insurer that is violative of the statute. It is apparent that if membership in arbitrarily selected groups were to be recognized as a proper base of underwriting policy, the way would be open whereby any company could evade legitimate assignments on the ground that the particular applicant was not a member of the selected group. Thus, the entire purpose of the statute would be defeated.

It is apparent that the Commissioner cannot have a plan providing for "equitable apportionment" of risks among all insurers unless he has the power to assign to appellant applicants who are non-members of the Association. Section 2445.1a of the Plan provides that when a member of the Association applies for insurance under the Plan, the [fol. 346] member shall preferably be assigned to appellant. However, appellant cannot refuse an applicant merely because he is not a member of the Association. This would seem to be as "equitable" an apportionment as is possible without destroying the effect of the statute.

Thus, whether it be considered that the Commissioner gave no consideration to appellant's policy of writing insurance only for members of the Association, or that he gave

such consideration "In so far as possible," the Plan does not violate the statute.

The judgment appealed from is affirmed.

Peters, P.J.

We concur:

Bray, J. Schottky, J. Pro Tem.

[fol. 347] In District Court of Appeal of the State of California in and for the First Appellate District, Divisions One and Two

Minute Entry of Judgment—April 10, 1950

Division One

14078

California State Automobile Association Inter-Insurance Bureau

v.

Downey, etc.

The judgment appealed from is affirmed. Peters, P. J. We concur: Bray, J., Schottky, J. pro tem.

[fol. 348] First Appellate District, San Francisco County

Honorable Edward P. Murphy, Judge

Division One

Civil No. 14078

[Title omitted]

Docket Entries

1950

April 25. Filed petition for rehearing.
May 19. Petition for hearing filed in Supreme Court.

[fol. 349] IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA IN AND FOR THE FIRST APPELLATE DISTRICT

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—May 10, 1950

BY THE COURT:

The Petition for a Rehearing filed in the above entitled cause is hereby denied.

Dated May 10, 1050.

Peters, P. J.

[fol. 350] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA, IN BANK

CALIFORNIA STATE AUTOMOBILE ASS'N INTER-INSURANCE BUREAU

v.

DOWNEY, as Insurance Com'r., etc.

ORDER DENYING HEARING AFTER JUDGMENT BY DISTRICT COURT OF APPEAL—Filed June 8, 1950

Appellant's petition for hearing Denied.

Dated —— —, ——.

Gibson, Chief Justice.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 351] [File endorsement omitted]

IN THE DISTRICT COURT OF APPEAL, STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION ONE

[Title omitted]

PETITION FOR APPEAL—Filed August 5, 1950

Considering itself aggrieved by the final decree and judgment of this Court entered on April 10, 1950, with respect to which this Court on May 10, 1950 denied a timely petition for rehearing and the Supreme Court of the State of California on June 8, 1950 denied a timely petition for hearing, petitioner and appellant California State Automobile Association Inter-Insurance Bureau hereby prays that an appeal be allowed to the Supreme Court of the United States from said final decree and judgment and from each and every part thereof; that citation be issued in accordance with law; that an order be made with respect to the appeal [fol. 352] bond to be given by said petitioner and appellant, and that the material parts of the record, proceedings and papers upon which said final judgment and decree was based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such cases made and provided.

Dated: August 3, 1950.

Respectfully submitted, Brobeck, Phleger & Harrison, Maurice E. Harrison, Moses Lasky, Attorneys for Petitioner and Appellant.

[fol. 353] [File endorsement omitted]

IN THE DISTRICT COURT OF APPEAL, STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION ONE

[Title omitted]

ORDER ALLOWING APPEAL—August 3, 1950

California State Automobile Association Inter-Insurance Bureau, having made and filed its petition praying for an appeal to the Supreme Court of the United States from the final judgment and decree of this Court in this cause, entered on April 10, 1950, with respect to which this Court on

May 10, 1950 denied a timely petition for rehearing and the Supreme Court of the State of California on June 8, 1950 denied a timely petition for hearing, and from each and every part thereof, and having presented its assignment of errors and prayer for reversal and its statement as to the [fols. 354-436] jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby ordered that said appeal be and the same is hereby allowed as prayed for.

It is further ordered that the amount of the appeal bond be and the same is hereby fixed in the sum of $250, with good and sufficient surety, and shall be conditioned as may be required by law.

It is further ordered that, pursuant to the "Stipulation for Stay of Issuance of Remittitur" filed herein on June 8, 1950 and the "Order Staying Remittitur" made and filed on June 8, 1950, the issuance of the remittitur shall be and is stayed until termination of the proceedings in the Supreme Court of the United States.

It is further ordered that the Clerk of this Court prepare, certify and transmit to the Supreme Court of the United States the record herein as designated or stipulated by the parties and that, so far as possible, the Clerk transmit the original transcripts and papers in the record, in lieu of copies.

It is further ordered that citation shall issue in accordance with law.

Dated: August 3, 1950.

Raymond E. Peters, Presiding Justice, District Court of Appeal, First Appellate District.

[fol. 437] [File endorsement omitted]

IN THE DISTRICT COURT OF APPEAL, STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION ONE

[Title omitted]

ASSIGNMENT OF ERRORS—Filed August 5, 1950

California State Automobile Association Inter-Insurance Bureau, petitioner and appellant in the above-entitled cause, in connection with its appeal to the Supreme Court of the United States, hereby files the following assignment of errors on which it will rely in its prosecution of its appeal from the final judgment of the District Court of Appeal of the State of California, First Appellate District, entered April 10, 1950.

The said District Court of Appeal erred:

1. In holding that the California Assigned Risk Law (Cal. Stats. of 1947, Ch. 39, p. 525, as amended, Stats. of [fol. 438] 1947, Ch. 1205, p. 2714; Sec. 11620-11627, Cal. Insurance Code), insofar as it compels, or empowers the Insurance Commissioner of the State of California to compel, petitioner and appellant and its members, against their will, to insure non-members of California State Automobile Association, does not violate and is not repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United States.

2. In holding that the California Assigned Risk Plan (Cal. Administrative Code, Title 10, Sec. 2400-2498) promulgated by the said Insurance Commissioner under authority of the said Assigned Risk Law, insofar as it compels petitioner and appellant and its members, against their will, to insure non-members of California State Automobile Association, does not violate and is not repugnant to the due process clause of said Fourteenth Amendment.

3. In holding that the said Insurance Commissioner could and did validly and without violating said Fourteenth Amendment suspend the certificate of authority of petitioner and appellant to transact automobile liability insurance in California for failure to subscribe to said Assigned Risk Plan.

4. In failing to order, adjudge and decree that the decision of said Insurance Commissioner, made March 19, [fol. 439] 1948, suspending petitioner and appellant's cer-

tificate of authority to transact automobile liability insurance in California, until it should subscribe to said Assigned Risk Plan, is invalid and void and should be annulled and set aside, as violating the said Fourteenth Amendment, and affirming the judgment of the Superior Court of the State of California in and for the City and County of San Francisco denying said petitioner and appellant's petition for writ of mandate to annul and set aside said decision of the Insurance Commissioner.

Wherefore, petitioner and appellant, California State Automobile Association Inter-Insurance Bureau, prays that the judgment and decision of the District Court of Appeal of the State of California, First Appellate District, be reversed, and for such other and further relief as the court may deem fit and proper.

Brobeck, Phleger & Harrison, Maurice E. Harrison, Moses Lasky, Attorneys for Petitioner and Appellant.

[fols. 440-442] Citation in usual form, filed Aug. 7, 1950, omitted in printing.

[fols. 443-472] Cost Bond on Appeal for $250.00 approved and filed Aug. 5, 1950, omitted in printing.

[fol. 473] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 474] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1950

[Title omitted]

APPELLANT'S STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed September 25, 1950

Appellant adopts for its statement of points upon which it intends to rely in its appeal in this Court the points contained in its Assignment of Errors heretofore filed.

Appellant designates the entire record herein for printing by the Clerk of this Court, except that the following may be omitted.

1. Pages 82, 83, 84.
2. Page 97, line 23 through page 100, line 22.

3. Page 103, line 3 through page 108, line 14.
4. Page 111, lines 7 to 16.
5. Page 118, line 5 through page 125, line 20.
6. Page 126, line 19 through line 18, page 128.

[fol. 475] 7. Page 131, line 18 through line 24, page 132.

8. Page 133, line 10 through page 134, line 19.
9. Page 135, line 24 through page 138, line 15.
10. Page 138, line 26 through page 145, line 6.
11. Page 147, beginning with the word "again" in line 23 through page 152, line 11.
12. Page 153, line 5 through line 13, page 155.
13. Page 157, line 4 through page 158, line 16.
14. Page 162, line 13 through page 164, line 6.
15. Page 165, line 25 through page 169, line 15.
16. Page 171, line 20 through page 172.
17. Page 178, line 15 through page 183.
18. Page 186, line 25 through page 200.
19. Page 202.
20. Pages 210 to 226, inclusive.
21. On page 228, all after the words "Description of Automobile" appearing in boldface in the middle of the page, to but not including the words "In Witness Whereof", etc.
22. On page 239, all after the words appearing in boldface in the middle of the page reading "Description and Facts with respect to the Purchase of the Automobile", to but not including the words "In Witness Whereof", etc.
23. On page 250, all after the words "Declarations by Applicant" appearing in bold face, to but not including the words "In Witness Whereof", etc.
24. On page 262, all after the words "Declaration by Applicant", to but not including the words "In Witness Whereof", etc.
25. Pages 263 to 279, inclusive.

[fol. 476] 26. Pages 355 to 436, inclusive.

27. Pages 446 to 466, inclusive.
28. Pages 468 to 471, inclusive.

Maurice E. Harrison, Moses Lasky, Counsel for Appellant.

[fol. 477] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1950

[Title omitted]

APPELLEE'S DESIGNATION OF ADDITIONAL AND MATERIAL PARTS OF THE RECORD TO BE PRINTED—Filed September 29, 1950

Appellee considers the following parts of the record, omitted from appellant's designation, to be material, and appellant therefore designates the following parts of the record to be printed:

(1) Page 118, line 5, through page 125, line 20.
(2) Page 126, line 19, through page 128, line 18.
(3) Page 133, line 10, through page 134, line 19.
(4) Page 135, line 24, through page 138, line 15.
(5) Page 138, line 26, through page 145, line 6.
(6) Page 147, beginning with the word "again" in line 23, through page 152, line 11.
(7) Page 153, line 5, through page 155, line 13.
(8) Page 157, line 4, through page 158, line 16.
[fol. 478] (9) Page 162, line 13, through page 164, line 6.
(10) Page 165, line 25, through page 169, line 15.
(11) Page 171, line 20, through page 172.
(12) Page 178, line 15, through page 183.
(13) Pages 263 to 279, inclusive.

Dated: September 25, 1950.

Fred N. Howser, Attorney General of the State of California; T. A. Westphal, Jr., Deputy; Harold B. Haas, Deputy, Attorneys for Appellee.

[fol. 479] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 310

ORDER NOTING PROBABLE JURISDICTION—November 13, 1950

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: Enter: Moses Lasky. File No. 54816. California, District Court of Appeal, First Appellate District. Term No. 310. California State Automobile Association Inter-Insurance Bureau, Appellant, vs. Wallace K. Downey, Insurance Commissioner of the State of California. Filed September 16, 1950. Term No. 310 O. T. 1950.